Supreme Court, U.S.
FILED

(1)

No. 991942

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In The

Supreme Court of the United States

DR. SANDRA K. DUNHAM, D.V.M.,
Petitioner,

versus

DR. GEORGE WADLEY, D.V.M.; WINGFIELD MARTIN; DR. EVERETT I. ROGERS; D.V.M.; DR. G. C. BLAIR, D.V.M.; DR. JAMES W. WAYMACK, D.V.M.; DR. DONALD I. MAYFIELD, D.V.M.; DR. GARY F. STRICKLAND, D.V.M.; and SHERRY GLOVER
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Robert J. Price
PRICE LAW FIRM
5115 Cantrell Road
Little Rock, AR 72207
(501) 664-0878
Attorney for Petitioner

27 pp

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER A STATE LAW WHICH GRANTS AN EXEMPTION FROM THE REQUIREMENT OF A CERTIFICATE OF LICENSE FROM A STATE REGULATORY AGENCY OTHERWISE MANDATORY, FOR ALL PERSONS WHO ENGAGE IN THE REGULATED ACTIVITY, CREATES A PROTECTED PROPERTY INTEREST IN THAT EXEMPTION.

II. WHETHER OFFICIALS WHO CLAIM THE AFFIRMATIVE DEFENSE OF QUASI-JUDICIAL IMMUNITY BEAR THE BURDEN OF PROVING FACTS TO SHOW THAT THEY WERE PERFORMING ACTS FUNCTIONALLY COMPARABLE TO A JUDGE'S AT THE TIMES IN QUESTION, OR WHETHER THE PARTY AGAINST WHOM SUCH A DEFENSE IS ASSERTED BEARS THE BURDEN OF PROVING THAT THE OFFICIALS WERE NOT SO ACTING.

III. WHETHER OFFICIALS OF A STATE REGULATORY BOARD WHO CLAIM QUASI-JUDICIAL IMMUNITY WERE ACTING IN THE COMPLETE ABSENCE OF THEIR JURISDICTION AT THE TIMES IN QUESTION.

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OPINIONS BELOW

The opinion of the United States District Court is not reported, and is included in the Appendix at App. 1. The opinion of the United States Court of Appeals for the Eighth Circuit is reported at195 F.3rd 1007 (1999), and is included in the Appendix at App. 14.

STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

The United States Court of Appeals for the Eighth Circuit issued its opinion on November 10, 1999. (App.14) On December 8, 1999, Petitioner filed a Suggestion for Rehearing En Banc, deemed by Eighth Circuit Rule 40A(b) to include a petition for rehearing by the panel, which the United States Court of Appeals denied on January 11, 2000. (App. 24) The Petition for Writ of Certiorari is filed within 90 days of the denial of the Petition for Rehearing

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1), and § 2106.

RELEVANT CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

United States Constitution, Article XIV, Section 1

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ark. Const., Art. 7, §11

§ 11. Circuit courts - Jurisdiction.

The circuit court shall have jurisdiction in all civil and criminal cases the exclusive jurisdiction of which may not be vested in some other court provided for by this Constitution.

Ark. Const., Art. 7, §40

§ 40. Exclusive and concurrent jurisdiction of justices of the peace - Criminal jurisdiction - Process - Power to issue.

They shall have original jurisdiction in the following matters: First, exclusive of the circuit court, in all matters of contract where the amount in controversy does not exceed the sum of one hundred dollars, excluding interest, and concurrent jurisdiction in matters of contract where the amount in controversy does not exceed the sum of three

hundred dollars, exclusive of interest; second, concurrent jurisdiction in suits for the recovery of personal property where the value of the property does not exceed the sum of three hundred dollars, and in all matters of damage to personal property where the amount in controversy does not exceed the sum of one hundred dollars; third, such jurisdiction of misdemeanors as is now, or may be, prescribed by law; fourth, to sit as examining courts and commit, discharge or recognize offenders to the court having jurisdiction, for further trial, and to bind persons to keep the peace or for good behavior; fifth, for the foregoing purposes they shall have power to issue all necessary process; sixth, they shall be conservators of the peace within their respective counties, provided a justice of the peace shall not have jurisdiction where a lien on land or title or possession thereto is involved.

42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress

applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Ark. Code Ann.§ 17-99-307

17-99-307. License required - Exemptions.

(a) No person may practice veterinary medicine in this state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the board.

(b) This chapter shall not be construed to prohibit:

(1) Employees of the federal, state, or local government from performing their official duties;

(2) Regular students in a veterinary school or college from performing duties or actions assigned by the school or college or working under direct supervision of a licensed veterinarian;

(3) Reciprocal aid of neighbors in performing routine accepted livestock management practices without compensation;

(4) Any veterinarian licensed in any foreign jurisdiction from consulting with a licensed veterinarian;

(5) The owner of an animal, his consignees, and their employees from performing routine accepted livestock management practices in the care of animals belonging to the owner;

(6) A member of the faculty of a veterinary school from performing his regular functions, or a person from lecturing or giving instruction or demonstration

at a veterinary school or in connection with a continuing education course or seminar for licensed veterinarians or registered technicians;

(7) A person from engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(8) A graduate of a foreign college of veterinary medicine who is in the process of obtaining an Educational Commission for Foreign Veterinary Graduates certificate from performing duties or actions under the direction and supervision of a licensed veterinarian;

(9)(A) Any act, task, or function performed by a veterinary technician at the direction of and under the supervision of a licensed veterinarian, when:

(i) The technician is certified by and annually registered with the board as one qualified by training or experience to function as an assistant to a veterinarian;

(ii) The act, task, or function is performed at the direction of, and under the supervision of, a licensed veterinarian in accordance with rules and regulations promulgated by the board; and

(iii) The services of the veterinary technician are limited to assisting the veterinarian in the particular fields for which the assistant has been trained, certified, and registered.

(B) Subdivision (9)(A) of this section shall not limit or prevent any veterinarian from delegating to a qualified person any acts, tasks, or functions which

are otherwise permitted by law, but which do not include diagnosis, prescribing medication, or surgery.

Ark. Code Ann.§ 17-99-312

17-99-312. Unlawful practice - Penalties - Injunctions.

(a) Any person who shall practice or attempt to practice veterinary medicine in this state without having been duly licensed in accordance with the provisions of this chapter shall be deemed guilty of a misdemeanor. Upon conviction, the person shall be fined in any sum of not less than fifty dollars ($50.00) nor more than two hundred fifty dollars ($250) for each and every offense or imprisoned for a term of not less than six (6) months nor more than one (1) year, or shall be both fined and imprisoned in the discretion of the court.

(b) Each day of such unlawful practice shall constitute a separate offense.

(c) One-half (½) of the sums assessed as fines under this chapter shall be paid into the general fund of the county wherein it is assessed, and one-half (½) of the sums assessed as fines under this chapter shall be deposited with the secretary-treasurer of the board and credited to the account of the Veterinary Medical Examining Board.

(d) The unlawful practice of veterinary medicine is declared to be a public nuisance.

(e) In addition to the penalties provided in this section, the board may institute legal proceedings to enjoin the violation of the provisions of this chapter or the rules of the board in any court of competent jurisdiction, and the court may grant a temporary or permanent injunction restraining the violation thereof.

Ark. Code Ann. §16-88-101

§ 16-88-101. Jurisdiction of courts for certain offenses generally.

(a) The jurisdiction of the various courts of this state, for the trial of offenses, shall be as follows:

(1) The Senate of Arkansas shall have exclusive jurisdiction of impeachment;

(2) The Supreme Court shall have general supervision and control over all inferior courts in criminal cases;

(3) The circuit courts shall have general jurisdiction for the trial of all offenses which may be prosecuted by indictment, and all prosecutions and penal actions, except as follows:

(A) City and police courts shall have exclusive jurisdiction of all prosecutions and actions for infractions of the bylaws or ordinances of the city or town in which they are located, concurrent jurisdiction with the circuit courts and justices' courts of prosecutions for misdemeanors committed in the town or city, and also concurrent jurisdiction in the

cases provided by the special statutes creating or regulating such courts.

(B) In criminal causes, the jurisdiction of courts of justices of the peace shall extend to all matters less than felony for final determination and judgment. However, circuit courts shall have jurisdiction concurrent with justices' courts in all criminal cases and in all criminal and penal causes except where exclusive jurisdiction is given to city and police courts.

(b) Where an indictment is found in the circuit court for an offense within its jurisdiction, the court shall have jurisdiction of all the degrees of the offense, and of all the offenses included in the one (1) charge, although some of those degrees or included offenses are within the exclusive jurisdiction of an inferior or local court.

STATEMENT OF THE CASE

The Petitioner seeks review of a judgment of the United States Court of Appeals for the Eighth Circuit; the basis for federal jurisdiction in the United States District Court for the Eastern District of Arkansas, Western Division, the court of first instance, is pursuant to 28 U.S.C. §1331 because the claims arose under the Constitution and laws (42 U.S.C. §1983) of the United States.

Jurisdiction in this Court is sought pursuant to Rule 10(c), because the United States Court of Appeals for the Eighth Circuit Court has decided an important question of federal law that has not been, but should be, settled by this Court.

The practice of veterinary medicine is a regulated activity in the State of Arkansas; the Arkansas Veterinary Medical Examining Board (hereafter "the Board") is the regulatory agency to which the Arkansas legislature has delegated, in large part, the authority to regulate the practice of veterinary medicine in Arkansas.

When the legislature delegated regulatory authority to the Board, the legislature specifically withheld from the Board the power to regulate certain classes of practitioners of veterinary medicine by exempting them from the general licensing requirements applicable to all other persons who practice veterinary medicine. The general requirement of a certificate of license from the Board is set forth in Ark. Code Ann. §17-99-307(a), and the various classes of persons exempt from Board licensure are set forth in Ark. Code Ann. §17-99-307(b).

The specific exemption to which the Petitioner was entitled is set forth in Ark. Code Ann. §17-99-307(b)(8). The Petitioner is a veterinarian who is a

graduate of a foreign college of veterinary medicine and who, at all times relevant to her claim, was in the process of obtaining an Educational Commission for Foreign Veterinary Graduates certificate and was performing duties or actions under the direction and supervision of a licensed veterinarian. The Petitioner claims a protected property interest in the permission to engage in the regulated activity she received from the State of Arkansas by virtue of the statutory exemption from Board licensure, and that the existence of her protected property interest entitled her to notice of any contemplated action against her interest as well as an opportunity to be heard prior to any action being taken.

The Defendants are all officials of the Arkansas Veterinary Medical Examining Board. The Petitioner asserted an action against them pursuant to 42 U.S.C. § 1983 for deprivation of her protected property interest without due process of law, alleging that during meetings of the Board on three separate occasions, the Defendants determined that the Petitioner was practicing veterinary medicine without a license and took action against her without giving her notice of the contemplated action or affording her an opportunity to be heard.

The District Court granted summary judgment in favor of the Defendants. The United States Court of Appeals for the Eighth Circuit entered its

Judgment affirming the decision of the District Court, holding that the exemption which the Petitioner claimed did not represent a protected property interest and that the Defendants were entitled to immunity. It is from the Judgment of the Court of Appeals that this Petition arises.

REASONS FOR GRANTING THE WRIT

I. IMPORTANT QUESTION WHICH SHOULD BE SETTLED.

All of the several states, including those in the Eighth Circuit, regulate various businesses, professions and occupations within their borders. All persons who intend to engage in state-regulated occupations generally must first obtain a certificate of license or registration from the particular state agency which regulates that occupation. Engaging in the regulated conduct without a license renders the conduct illegal.

In the state of Arkansas, 62 different professions, businesses and occupations are regulated by the state. See, Ark. Code Ann. §17-10-101 through §17-106-111. The general rule of law is that it is unlawful for a person to engage in state-regulated conduct unless that person has first obtained a certificate of license or registration from the state. In many occupations, such as the one at issue in this

case, engaging in the regulated conduct without a license rises to the level of a criminal offense.

There are numerous exceptions to the requirement of a certificate of license. In Arkansas alone, state law creates exemptions from the requirement of a certificate of license for 44 of the 62 regulated occupations, including the one at issue in this case: Contractors, A.C.A. §17-25-102, A.C.A. §17-25-513; Counsellors, A.C.A. §17-27-103; Alcoholism and Drug Abuse Counsellors, A.C.A. §17-27-403; Electricians, A.C.A. §17-28-304, 309, 310 (mentioned but not defined); Embalmers and Funeral Directors, A.C.A. §17-29-311(b); Engineers, A.C.A. §17-30-105; Foresters, A.C.A. §17-31-301; Geologists, A.C.A. §17-32-302; Heating, Ventilation, Air Conditioning, and Refrigeration Workers, A.C.A. §17-33-106; Interior Designers, A.C.A. §17-35-104, A.C.A. §17-35-604; Landscape Architects, A.C.A. §17-36-309; Pest Control Services, A.C.A. §17-37-202, A.C.A. §17-37-203; Plumbers, A.C.A. §17-38-302; Personal Investigators and Private Security Agencies, A.C.A. §17-40-103; Real Estate Brokers and Salespersons, A.C.A. §17-42-104; Soil Classifiers, A.C.A. §17-47-103; Transient Merchants, A.C.A. §17-49-104; Water Well Constructors, A.C.A. §17-50-108; Home Inspectors, A.C.A. §17-52-204; Health Educators, A.C.A. §17-53-106; Chiropractors, A.C.A. §17-81-302; Dentists, Dental Hygienists, and Dental

Assistants, A.C.A. §17-82-302; Dieticians, A.C.A. §17-83-104; Hearing Instrument Dispensers, A.C.A. §17-84-102; Lay Midwives, A.C.A. §17-85-105; Massage Therapists, A.C.A. §17-86-301(b); Nurses, A.C.A. §17-87-102(4)(c), A.C.A. §17-87-103; Occupational Therapists, A.C.A. §17-88-103; Ophthalmic Dispensers, A.C.A. §17-89-103; Optometrists, A.C.A. §17-90-101(d), A.C.A. §17-90-102; Pharmacists and Pharmacies, A.C.A. §17-92-102; Physical Therapists, A.C.A. §17-93-301; Physicians and Surgeons, A.C.A. §17-95-203; Podiatric Medicine, A.C.A. §17-96-102; Psychologists and Psychological Examiners, A.C.A. §17-97-103 A.C.A. §17-97-104; Disease Intervention Specialists, A.C.A. §17-98-104; Respiratory Care Practitioners, A.C.A. §17-99-301(b); Speech Language Pathologists and Audiologists, A.C.A. §17-100-104; Veterinarians and Animal Technicians, A.C.A. §17-101-307(b); Acupuncturists, A.C.A. §17-102-210A.C.A. §17-102-211; Social Workers, A.C.A. §17-103-104; Perfusionists, A.C.A. §17-104-313; Physician Assistants, A.C.A. §17-105-106; Persons Using Radioactive Materials, A.C.A. §17-106-111.

Although the Eighth Circuit Court of Appeals has articulated a two-part test to be used in determining whether a protected property interest exists, Craft v. Wipf, 836 F.2d 412, 417 (8th Cir. 1987), and Jennings v. Lombardi, 70 F.3d 994 (8th

Cir. 1995), it did not apply the test to the exemption which the Petitioner claims. Instead of using its stated test and determining (1) it contains particularized substantive stand-ards or criteria that guide the decisionmakers, and (2) it uses mandatory language requiring the decisionmakers to act in a certain way, thus limiting the official's discretion , the Court of Appeals held that,

> . . .the statute's exemption did not create a protectable property interest, because it did not entitle Dr. Dunham to do anything; she was merely exempted from a licensing requirement. The statute did not change Dr. Dunham's legal status in any way: If the licensing requirement had not been enacted, she would have been entitled to practice veterinary medicine without a license, which is precisely the right that she is presently claiming. Her exemption from the licensing requirement therefore created no constitutionally protected property interest.

It is the absence of binding precedent for the determination of protected property interests which allowed the Court of Appeals to decide this issue in such an inconsistent manner.

While it is settled law that the courts must look to state law in order to determine the existence of a protected property interest, the Court has not established a uniform test for the courts to apply to state law when making such determinations. Likewise, the Court has never addressed the specific issue of whether a state law which grants an exemption from the requirement of a certificate of license from a state regulatory agency, otherwise mandatory for all persons who engage in the regulated activity, creates a protected property interest in that exemption.

In view of the large number of activities now regulated by agencies and boards of the several states and the corresponding large number of exemptions created by state law from the requirement of an agency certificate of license, a significant number of persons will be affected by the decision in this case. The question of whether a protected property interest is created by a state law which grants an exemption from the otherwise mandatory requirement of an agency certificate of license is therefore an important question which should be settled by the Court.

II. ABSOLUTE IMMUNITY.

Because the Court of Appeals found that even if the Petitioner did have a protected property interest in the exemption, her claim still would have failed

because the Defendants were entitled to absolute immunity, the Petitioner addresses that issue, as well. The Petitioner acknowledges the caveat in Supreme Court Rule 10 that a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule, but urges the Court that because the issue is so narrow, and the law so clear, the Petitioner's case represents the rare exception to that general rule.

The Court of Appeals held that the defendants are entitled to absolute immunity, stating, "To the extent that the Board weighed evidence, made factual determinations, determined sanctions, and issued written decisions, we conclude that these duties are functionally comparable to the duties performed by courts." (Opinion, p. 5, Par. 2; App. 22)

The Petitioner does not challenge or disagree with the Court of Appeals' findings concerning the Defendant Board members' statutory duties.[1] (Opinion, p. 6, Par. 1; App. 23) There is no question that the Board members had statutory

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[1]Defendant Glover is not a Board member. The statutory powers attributable to Board members and noted by the Court do not apply to her, and Ark. Code Ann. §§17-99-101, et seq., confer no judicial or prosecutorial powers upon her position.

authority to act judicially or to perform prosecutorial functions in certain situations. The narrow question of what the Defendants were doing at the particular times they acted is a separate matter entirely, and is the issue with which the Petitioner takes exception.

It does not follow that just because the Defendant Board members had statutory authority and could have lawfully acted judicially or prosecutorily, they therefore were performing judicial or prosecutorial functions at a given time. Whether a government official is entitled to absolute or qualified immunity depends upon the official's function **in a particular context or proceeding**. Forrester v. White, 484 U.S. 219, 225, 98 L.Ed.2d 555, 108 S.Ct. 538 (1988). (Emphasis supplied.)

The facts in the record consist of the affidavits submitted by the parties (App. 26 - 120), the Defendants' Statement of Uncontested Material Facts (App. 122), and the Petitioner's Statement of Contested Material Facts (App. 129). All of the affidavits the Defendants submitted to the District Court are essentially identical, save the Affidavit of Defendant Glover.

While it is conceded that the Defendant Board members were initially performing functions comparable to a judge's on the third occasion when they heard a complaint concerning the Petitioner's

father, they then ceased acting judicially when they stepped out of the role of the decision maker and entered into an agreement with the Petitioner's father. (Par. 11 of Defendants' Statement of Uncontested Material Facts; App. 124) A judge's function is not to enter into agreements with parties, but rather to decide controversies before the tribunal.

None of the affidavits presented a single fact concerning what the Defendants were doing or the function any of the Defendants was performing on two of the three occasions they acted. Not one of the affidavits presented a single fact showing that the Defendants were acting on a complaint properly before the Board or that they were otherwise engaging in a function that was either judicial or prosecutorial on the two occasions when the Board issued its "cease and desist" letters.

In order to hold that the function the Defendants were performing was judicial in nature, the Court of Appeals had to assume facts not in the record. It is not the responsibility of the courts to assume facts or supply proof not in evidence. Robinson v. Freeze, 15 F.3d 107 (8th Cir. 1994); Buckley v. Fitzsimmons, 113 S.Ct. 2606 (1993); Kohl v. Casson, 5 F.3d 1141 (8th Cir. 1993).

To compound the error, the Court of Appeals erroneously placed the burden of proof on this issue

on the Petitioner, holding that she produced no evidence showing that the Defendants acted in non-judicial or non-prosecutorial capacities, or that they acted in "complete absence of all jurisdiction." (App. 23)

It is not the Petitioner's responsibility to prove that the Defendants were not acting in a quasi-judicial capacity; it is the Defendants' burden to prove that they were acting judicially or prosecutorily at the times in question. An official seeking the protection of absolute immunity bears the burden of establishing it for the particular function. Robinson v. Freeze, supra; Buckley v. Fitzsimmons, supra. Kohl v. Casson, supra.

Even if the Defendants had presented facts showing that they were performing judicial or prosecutorial functions at the times in question, they still would not be entitled to a claim of absolute immunity. A well recognized exception to a claim of absolute immunity is when the official acts in the absence of jurisdiction. Mireles v. Waco, 502 U.S. 9, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991).

The Petitioner presented facts to show that each of the Board's several actions concerning the Petitioner was based upon the Board's accusation that she was practicing without a license, an offense over which the Board had no jurisdiction. (Affidavit of

Sandra K. Reynolds, Exhibits G, H and I, App. 55 - 58) The Defendants presented no facts on this issue.

In Ark. Code Ann. §17-99-305(a)(1) - (21), the Arkansas legislature gave the Defendants statutory authority to act judicially concerning certain specific violations of the Arkansas Veterinary Medical Practice Act; practicing without a license was not a violation which the Board had jurisdiction to adjudicate.

Not only did the Defendants lack specific statutory authority to act judicially concerning an accusation that a person was practicing without a license, but such violations are crimes, over which only the Arkansas courts have jurisdiction. Ark. Code Ann. §17-99-312 makes practicing veterinary medicine without a license a criminal offense. Jurisdiction to hear and decide criminal cases is conferred exclusively upon the Arkansas Police, Municipal and Circuit Courts. Ark. Const., Art. 7, §11, §40, Ark. Code Ann. §16-88-101(A)(3)(b) (1987 Supp.).

The Petitioner also demonstrated that the Defendants otherwise acted in the complete absence of their jurisdiction. The Board took direct injunctive action by issuing its "cease and desist" letters in the complete absence of jurisdiction. If the Board deemed that it was necessary to enjoin a violation of

the provisions of the Veterinary Medical Practice Act, the Board did not have statutory authority to do so itself, but was required to institute legal proceedings in a court of competent jurisdiction. Ark. Code Ann. §17-99-312 (e).

The Board nevertheless ordered the Petitioner to cease and desist the practice of veterinary medicine and ordered her employers to cease and desist from employing her, upon pain of official action if they did not do so.

CONCLUSION

The question of whether a protected property interest is created by a state law which grants an exemption from the otherwise mandatory requirement of an agency certificate of license is an important question which affects a significant number of persons and has not been, and should be, settled by the Court. When addressing this question, the Court should set out a uniform test for the courts to apply to state law when making the determination of whether a state law creates a protected property interest.

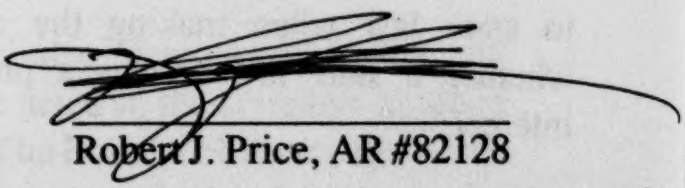
The Court should reaffirm its prior holdings to the effect that in order to maintain a claim of absolute judicial immunity, the party asserting that affirmative defense has the burden of proving that the function he

or she was performing at the time he or she acted was functionally comparable to that of a judge or prosecutor. The Defendants in this case did not do so, presenting no facts whatsoever to show the nature of the function they were performing, and the Court should hold that they are not entitled to absolute immunity.

Even if the Defendants in this case had presented such facts, they still are unable to claim absolute immunity because they acted in the complete absence of jurisdiction. The Board had no jurisdiction to hear the type of violation of which the Petitioner stood accused, nor did it have the authority to take injunctive action against the Petitioner or her employers, and the Court should so hold.

Respectfully submitted,

PRICE LAW FIRM
5115 Cantrell Road
Little Rock, AR 72207
(501) 664-0878



Robert J. Price, AR #82128

Supreme Court, U.S.
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Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

APPENDIX

Robert J. Price
PRICE LAW FIRM
5115 Cantrell Road
Little Rock, AR 72207
(501) 664-0878
Attorney for Petitioner

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DR. SANDRA K. DUNHAM, D.V.M.,
PLAINTIFF

VS. NO. LR-C-95-432

DR. GEORGE WADLEY, D.V.M.,
ET AL, DEFENDANTS

ORDER

Filed January 29, 1999

Now pending is defendants' Motion for Summary Judgment (doc. #67). After careful consideration, and for good cause shown, the Court finds that the motion should be, and hereby is, granted.

Plaintiff, Sandra K. Dunham, D.V.M., brings this 1983 action against defendants, all members or former members of the Arkansas Veterinary Medical Examining Board ("the Board"), in their individual capacities. Plaintiff alleges that defendants, acting under color of state law as members of the Board, took actions with regard to plaintiff's "license to practice veterinary medicine," which violated plaintiff's rights to substantive and procedural due

process of law and equal protection under the law, as guaranteed by the Fourteenth Amendment to the United States Constitution. See Second Amended Complaint, Docket Entry #37, ¶¶ 50-52. Plaintiff also brings pendent state claims of defamation and tortious interference with business relationship against defendants. Id. ¶¶ 53-57.

During the relevant time period, plaintiff, a 1991 graduate of the Justus Liebig University in Giessen, West Germany - a foreign college of veterinary medicine - , alleges she was in the process of obtaining an Educational Commission for Foreign Veterinary Graduates ("ECFVG") certificate. She alleges that, at all times relevant to this action, she was performing veterinary duties or actions under the direction and supervision of licensed veterinarians. Plaintiff claims that the defendant Board members were aware of her enrollment in the ECFVG program. She further alleges that the defendants were aware that she was performing duties under the direction and supervision of licensed veterinarians.

Thus, plaintiff submits that she had satisfied all statutory requirements for the practice of veterinary medicine in the state of Arkansas and was, therefore "licensed" by the state of Arkansas to engage in the practice of veterinary medicine. Plaintiff has submitted affidavits and other evidence to support her version of the facts.

In asserting her federal causes of action under § 1983, plaintiff does not claim to have been licensed *by the Board* at any point in time relevant to this action.[1] Rather, plaintiff asserts that she was "licensed" to practice medicine by virtue of her qualification for exemption from licensure under Arkansas law then in effect. Specifically, plaintiff claims entitlement to an exemption under Ark. Code Ann. § 17-99-307(b)(8), which permitted foreign veterinary graduates who were in the process of obtaining an ECFVG certificate to perform veterinary duties or actions under the direction and supervision of a licensed veterinarian. This exemption was repealed by the Arkansas General Assembly in 1995.

Plaintiff claims that, from on or about July 22, 1992, through on or about April 20, 1994, defendants participated in a series of meetings of the Board, at which defendants considered accusations concerning plaintiff Dunham's activities as a veterinarian. Specifically, plaintiff alleges she was accused of practicing veterinary medicine in violation of the Arkansas Veterinary Medical Practices Act ("the Act"), in that she was practicing without proper licensure. Plaintiff alleges that she was given no notice of the meetings, nor was she afforded an

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[1]Since initiating this action, plaintiff has obtained a license to practice veterinary medicine.

opportunity to appear before the board to address the accusations considered at the meetings.

Plaintiff claims that, as a result of the series of Board meetings, defendants determined that Dr. Dunham was practicing veterinary medicine illegally and defendants, acting through counsel for the Board, caused "cease and desist" letters to be sent to Dunham and her employers, resulting in plaintiff's termination from two animal clinics. Plaintiff alleges that the Board also wrongfully caused its legal counsel to request that the local prosecuting attorney file misdemeanor criminal charges against plaintiff and to file, on behalf of the Board, a petition for injunctive relief against plaintiff.

Plaintiff further alleges that defendant Glover published false and defamatory information to the effect that plaintiff was practicing illegally to an official with the Arkansas Department of Health. She claims this resulted in a press release being sent to the local newspaper in Monticello, Arkansas, where plaintiff was practicing, to the effect that plaintiff was practicing illegally. Plaintiff alleges that defendant Glover also published false and defamatory information by means of a letter to the Editor of the newspaper. Plaintiff claims that she suffered injury to her reputation as a result of defendant Glover's publications.

In arguing that they were entitled to summary judgment, defendants contend that plaintiff was not licensed to practice veterinary medicine by the Board, nor was she entitled to the exemption allowed under Ark. Code Ann. § 17-99-307(b)(8). Defendants claim that the Board construed the referenced exemption as requiring that a licensed veterinarian be on site in order to direct and supervise an unlicensed foreign graduate. Defendants claim that Dr. Gary Wallace, owner of the Monticello Animal Clinic where plaintiff worked in 1992, lived in North Little Rock, Arkansas and that Dr. Wallace was not present at the clinic to supervise and direct plaintiff's practice of veterinary medicine. On this basis, defendants claim they determined that plaintiff was practicing veterinary medicine without a license or entitlement to an exemption from licensure and, therefore, issued the subject cease and desist letters.

Defendants claim that, after her termination from the Monticello Animal Clinic, plaintiff went to work at the Crossett Animal Clinic under the employment of her father, Dr. Robert Dunham. However, defendants claim Robert Dunham surrendered his veterinary license in November of 1993 as part of an agreement entered into with the Board in response to charges which had been leveled against Dr. Robert Dunham. Defendants claim that a member of the Board, thus, informed plaintiff that she could not practice at the Crossett Animal Clinic while her father's veterinary license was revoked unless

another licensed veterinarian was brought into the clinic. The Board then sent cease and desist letters concerning plaintiff's practice at the Crossett Animal Clinic.

Defendants maintain that plaintiff never contacted the Board or requested an opportunity to address the Board in response to its communications, despite having been advised how to reach the Board and invited to contact the Board with any questions. Defendants claim that, having had no response to its cease and desist letters the Board filed its Petition for Injunctive Relief against plaintiff in Ashley County Chancery Court.

Defendants have submitted affidavits and other evidence to support their version of the facts.

Although the parties dispute the facts surrounding the occurrences which give rise to plaintiff's causes of action herein, neither side disputes that the parties subsequently entered into a settlement agreement and joint stipulation of dismissal in the Ashley County case. *See* Joint Stipulation of Facts, attached as Ex. 10 to Defendants' Brief in Support of Motion for Summary Judgment. Therein plaintiff agreed that she was "subject to 'license' by the Board as defined by A.C.A. § 25-15-202(8), and is governed by the provisions of the Arkansas Veterinarian Medical Practices Act and the rules and regulations promulgated by the Board." Plaintiff

further stipulated that she was "neither a licensed veterinarian as defined by A.C.A. § 17-99-102(4), nor the holder of a valid temporary permit issued by the Board, as set forth in A.C.A. § 17-99-304(a)." Defendants, as part of the settlement agreement, stipulated that plaintiff had, at all relevant times, been "in the process of obtaining an ECFVG certificate as defined by A.C.A. § 17-99-102(8)." Defendants further stipulated that plaintiff had, at all relevant times, been practicing "under the direction and supervision of a licensed veterinarian," as defined by A.C.A. § 17-99-102(4)," such that plaintiff "was exempt from licensure by the board pursuant to A.C.A. § 17-99-307(8)."

The Court concludes that both parties are bound by the stipulation entered in resolution of the prior law suit. Thus, the Court finds that the Board has conceded that the plaintiff qualified for the exemption to licensure then in effect, so as to allow her to practice veterinary medicine under the direction and supervision of a licensed veterinarian so long as that statute was in effect. Furthermore, the Court finds that plaintiff has conceded that she held no valid license to practice veterinary medicine in the state of Arkansas, so as to have a constitutionally protected interest. She merely met the qualifications for a statutory exemption allowing her to practice in absence of a license.

Having considered plaintiff's causes of action in light of these undisputed facts, the Court concludes that defendants are entitled to judgment as a matter of law.

To substantiate a § 1983 claim of due process violation, a plaintiff must establish that she was deprived of a constitutionally protected property interest because of defendants' actions, and that the deprivation occurred without due process of law. *Parratt v. Taylor*, 451 U.S. 527, 536-37, 101 S.Ct. 1908, 1913 (1981); *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972) (A person's right to due process, or notice and an opportunity to appear and be heard, is triggered by whether or not the person has a protected property interest).

Property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law. Roth, 408 U.S. at 577, 92 S.Ct. At 2709; *Ikpeazu v. University of Nebraska*, 775 F.2d 250, 253 (8th Cir. 1985). A constitutionally protected property interest requires a demonstration of an entitlement to the interest. Roth, 408 U.S. at 577, 92 S.Ct. At 2709.

In this instance, the Court finds plaintiff's assertion of a constitutionally protected license to practice veterinary medicine at odds with her concession in the earlier action and before this Court

that she did not hold a license to practice veterinary medicine during the subject time period, but merely qualified for a statutory exemption. The Court is not persuaded by plaintiff's argument that she has only admitted the lack of a certificate issued by the Board while claiming licensure by virtue of the exemption. In enacting law setting forth certain exemptions to licensure, the Arkansas General Assembly retained unrestricted discretion to change the law at any time. Thus, unlike a license, plaintiff's qualification for the exemption then in effect does not qualify as a constitutionally protected interest. *See Doran v. Houle*, 721 F.2d 1182, 1185 (9th Cir. 1983) ("Where the government, as the source of the interest in question, retains unrestricted discretion over future enjoyment of the interest, the interest is not a protected entitlement.") (citing *Bishop v. Wood*, 426 U.S. 341, 344-47, 96 S.Ct. 2074, 2077-78 (1976)).

Moreover, plaintiff has failed to present evidence to establish that defendants, through their actions in meeting to discuss plaintiff's activities, sending cease and desist letters, requesting prosecution of plaintiff, and filing a lawsuit to enjoin plaintiff's practice, deprived plaintiff of any interest without due process of law. Defendants assert, and plaintiff does not dispute, that, during the relevant time period, the Board lacked authority over unlicensed practitioners. Thus, the Board could not engage in any "adjudication" with regard to plaintiff so as to invoke the due process protections afforded

by the Arkansas Administrative Procedures Act, Ark. Code Ann. § 25-15-201, *et seq.* (1995 repl.) ("APA"). Nor could the Board, itself, deprive plaintiff from practicing under her claim to exemption from licensure. Rather, defendants could only apply to another authority or tribunal - in this instance the prosecuting attorney or the chancery court - for any final binding action. *See Int'l Tel. And tel. Corp., Communications Equip. and Sys. Div. V. Local 134, Int'l Bhd. Of Elec. Workers, AFL-CIO*, 419 U.S. 428, 95 S.Ct. 600 (1975) (agency investigatory proceedings, no matter how formal, which do not lead to issuance of an order containing elements of a final disposition do not constitute an "adjudication" within the meaning of the APA).

Plaintiff has failed to allege any facts in support of her claim that defendants' actions deprived her of her constitutional right to equal protection under the law. Thus defendants are entitled to summary judgment on this claim as well.

To the extent that plaintiff seeks monetary relief from defendants in their official capacities, defendants are entitled to Eleventh Amendment immunity from suit. To the extent that any injunctive relief would apply as against the Board itself, as opposed to the individual members of the Board, plaintiff's claims are also barred by Eleventh Amendment immunity.

Plaintiff is further barred from obtaining injunctive or declaratory relief as against the defendants in their official capacities because her claim has become moot since obtainment of her license to practice veterinary medicine in 1997. *See Scher v. Chief Postal Inspector*, 973 F.2d 682, 683 (8th Cir. 1992); *Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985). Plaintiff has not established the application of the exemption to the mootness doctrine recognized in *Murphy v. Hunt*, 455 U.S. 478, 482, 102 S.Ct. 1181, 1183 (1982).

Assuming arguendo that plaintiff could establish that her exemption from licensure constituted a constitutionally protected property interest, defendants are, nonetheless, entitled to judgment as a matter of law.

If the Court accepts plaintiff's proposition that the Board meetings addressing plaintiff's practice of veterinary medicine were of such a nature as to require notice to the plaintiff, then the meetings would have constituted quasi-judicial hearings. The defendant Board members are absolutely immune from suit for actions taken while acting in a quasi-judicial capacity. Defendant Glover, as Executive Secretary of the Board, is further absolutely immune from suit for actions taken while acting in a prosecutorial capacity. *See Harlow v. Fitzgerald*, 457 U.S. 800, 811 (1982) ("Judicial, prosecutorial, and legislative functions require absolute immunity.");

Butz v. Economou, 438 U.S. 478 (1978) (agency officials who perform quasi-judicial functions similar to those of judges or prosecutors entitled to absolute immunity; *Kwoun v. Southeast Missouri Professional Standards Review* Organization, 811 F.2d 404 (8th Cir. 1987), *cert. denied*, 486 U.S. 1022 (1988) (agency administrator afforded absolute prosecutorial immunity in deciding whether proceeding should be brought against specified individual); *Hicks v. Georgia Board of Pharmacy*, 553 F.Supp. 314, 317 (10th Cir. 1982) (Members of Georgia State Board of Pharmacy were absolutely immune from damages in exercise of their quasi-judicial functions regarding issuance, suspension or revocation of a license).

Defendants are also entitled to qualified immunity for their actions in this instance. Even if the Court determined that plaintiff's statutory exemption from licensing gave rise to a constitutionally protected property interest, the law was not clearly established in this regard such that reasonable persons in defendants' positions would have realized their actions violated the law.

Based on the foregoing, summary judgment will be entered in favor of defendants on plaintiff's § 1983 claims.

Having granted summary judgment on plaintiff's federal causes of action, the Court declines

to exercise supplemental jurisdiction over plaintiff's state law causes of action.

Any remaining pending motions are hereby denied as moot.

IT IS SO ORDERED this 29 day of January, 1999.
"s/James M. Moody, United States District Judge"

Counsel: Robert J. Price for Plaintiff; M. Wade Hodge for Defendants.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DR. SANDRA K. DUNHAM, D.V.M.,
PLAINTIFF

VS. NO. LR-C-95-432

DR. GEORGE WADLEY, D.V.M.,
ET AL, DEFENDANTS

JUDGMENT

Pursuant to the Order entered in this matter this date, summary judgment is hereby entered in favor of defendants on plaintiff's § 1983 claims.

Having granted summary judgment on plaintiff's federal causes of action, the Court declines to exercise supplemental jurisdiction over plaintiff's state law causes of action.

DATED this 29 day of January, 1999.

"s/James M. Moody, United States District Judge"

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 99-1524

Sandra K. Dunham, D.V.M.,
Appellant

V.

Appeal From the United States District Court for the Eastern District of Arkansas.

George Wadley, D.V.M.;
Wingfield Martin;
Everett I. Rogers, D.V.M.;

G. C. Blair, D.V.M.;
James W. Waymack, D.V.M.;
Donald I. Mayfield, D.V.M.;
Gary F. Strickland, D.V.M.; and
Sherry Glover,
Appellees

Submitted: September 16, 1999

Filed: November 10, 1999

Before BOWMAN, LAY, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

MORRIS SHEPPARD ARNOLD, Circuit Judge.

Sandra Dunham, a veterinarian, appeals the decision by the district court[1] to grant the defendants' motion for summary judgment on her claims under 42 U.S.C. § 1983 and Arkansas law. The defendants were members of the Arkansas Veterinary Medical Examining Board at all times in question.

Dr. Dunham contends that a licensing exemption contained at the relevant time in the Arkansas statutes, see Ark. Code Ann. § 17-99-

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[1]The Honorable James M. Moody, United States District Judge for the Eastern District of Arkansas.

307(b)(8) (1994) (repealed 1995), gave her a constitutionally protected property interest and that the defendants deprived her of it without due process. The district court held that although Dr. Dunham qualified for the exemption, such a qualification did not establish a property interest that was protected under state law. The district court further held that the board members were absolutely immune from suit by virtue of the fact that their proceedings were quasi-judicial in nature. We affirm the district court's judgment.

I.

The defendants participated in meetings of the board during which they considered accusations that Dr. Dunham was practicing veterinary medicine without a license in violation of Ark. Code Ann. § 17-101-312(a). Dr. Dunham was not licensed to practice veterinary medicine in Arkansas, but was in the process of obtaining an Educational Commission for Foreign Veterinary Graduates (ECFVG) certificate. One subsection of the Arkansas statutes at the relevant time provided that "[t]his chapter shall not be construed to prohibit ...[a] graduate of a foreign college of veterinary medicine who is in the process of obtaining an [ECFVG] certificate from performing duties or actions under the direction and supervision of a licensed veterinarian. See Ark. Code Ann. § 17-99-307(b)(8) (1994).

The board interpreted this licensing exemption for ECFVG candidates as requiring the supervising licensed veterinarian to be physically present at the clinic where the ECFVG candidate was practicing. The board had received information that Dr. Dunham was practicing at two clinics without a licensed veterinarian on site and therefore sent "cease and desist" letters to Dr. Dunham and her two employers. Each employer then terminated her employment. Dr. Dunham thus claims that the letters to the clinics caused her employment to be terminated. (The board subsequently petitioned in Arkansas state court to enjoin Dr. Dunham from any future unauthorized practice of veterinary medicine.)

Dr. Dunham contests the board's conclusion that she was outside the scope of the statutory exemption and was therefore unlawfully practicing veterinary medicine. The board's letters invited Dr. Dunham to call the board's office if she had any questions, but she testified that she did not do so because she "became aware that for [her] to have attempted to discuss [her] situation would have been futile." She argues that the board should have given her the opportunity to demonstrate that her actions fell within the exemption and that the defendants' failure to give her this opportunity deprived her of due process.

II.

To establish a claim under 42 U.S.C. § 1983, Dr. Dunham must show a deprivation of a right, privilege, or immunity secured by the Constitution or the laws of the United States. See Montano v. Hedgepeth, 120 F.3d 844, 848 (8th Cir. 1997). Dr. Dunham asserts that the defendants deprived her of property without procedural due process of law and thus in violation of the fourteenth amendment.

The analysis of a procedural due process claim must begin with an examination of the interest allegedly violated. See Riley v. St. Louis County, 153 F.3d 627, 630 (8th Cir. 1998), cert. denied, 119 S.Ct. 1113 (1999). Property interests such as the one claimed by Dr. Dunham derive from existing rules that stem from an independent source, such as state law. See Board of Regents v. Roth, 408 U.S. 564, 577 (1972); see also Singleton v. Cecil, 176 F.3d 419, 421-22 (8th Cir. 1999) (en banc), petition for cert. filed, No. 99-376 (U.S. Aug. 31,1999). Dr. Dunham maintains that Ark. Code Ann. § 17-99-307(b)(8) (1994) provided her with a property interest in practicing veterinary medicine that was protected by the fourteenth amendment. We disagree.

The Supreme Court has said that "[t]he hallmark of property ...is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'" Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982). We have held that a state statute or policy can create a constitutionally protected

property interest, first, when it contains particularized substantive standards that guide a decision maker and, second, when it limits the decision maker's discretion by using mandatory language (both requirements are necessary). See. Jennings v. Lombardi, 70 F.3d 994, 995-96 (8th Cir. 1995). Statutes or policies that are only procedural, or that grant to a decision maker discretionary authority in their implementation, in contrast, do not create protected property interests. Id. at 996.

The statute provides that "[n]o person may practice veterinary medicine in this state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the board." See Ark. Code Ann. § 17-101-307(a). The subsection that listed exemptions to that requirement at the relevant time stated that "[t]his chapter shall not be construed to prohibit ...[a] graduate of a foreign college of veterinary medicine who is in the process of obtaining an [ECFVG] certificate from performing duties or actions under the direction and supervision of a licensed veterinarian." That subsection, § 17-99-307(b)(8) (1994), along with eight other subsections, therefore provided a statutory exemption from the general prohibition on the unlicensed practice of veterinary medicine.

We believe, however, that the statute's exemption did not create a protectable interest, because it did not entitle Dr. Dunham to do anything;

she was merely exempted from a licensing requirement. The statute did not change Dr. Dunham's legal status in any way: If the licensing requirement had not been enacted, she would have been entitled to practice veterinary medicine without a license, which is precisely the right that she is presently claiming. Her exemption from the licensing requirement therefore created no constitutionally protected property interest. See Roth, 408 U.S. at 576, 578, and Jennings, 70 F.3d at 996.

III.

It may well be that Dr. Dunham had a liberty interest in practicing veterinary medicine, a right created not by the statute on which she relies but one that the fourteenth amendment nevertheless protects. See generally Conn v. Gabbert, 119 S.Ct. 1292, 1295-96 (1999); see also Roth, 408 U.S. at 571-72. Although Dr. Dunham makes no such argument here, we do not want to be understood as saying that such a liberty interest does not exist or that we would have rejected the argument that such an interest did exist if Dr. Dunham had made it. But even if Dr. Dunham did have a constitutionally protected liberty to be a veterinarian, we believe that her claim would have failed because the defendants are entitled to absolute immunity.

Persons who perform quasi-judicial functions are entitled to absolute immunity. See Butz v.

Economou, 438 U.S. 478, 512-16 (1978); see also Kwoun v. Southeast Missouri Professional Standards Review Organization, 811 F.2d 401, 407 (8th Cir. 1987). The Supreme Court has held that absolute immunity is appropriate when an official's functions are similar to those involved in the judicial process, see Butz, 438 U.S. at 513, an official's actions are likely to result in lawsuits for damages by disappointed parties, see id. at 515, and sufficient safeguards exist in the regulatory framework to control unconstitutional conduct, see id. at 512. See also Ostrzenski v. Seigel, 177 F.3d 245, 249 (4th Cir. 1999), and Romano v. Bible, 169 F.3d 1182, 1187 (9th Cir. 1999).

The board here consisted of five members who were appointed by the governor for five-year terms. See Ark. Code Ann. § 17-101-201(b). Four of the members were licensed veterinarians, see § 17-101-201(b)(1), and one of the members was a non-licensed public citizen, see § 17-101-201(b)(2). The membership terms are arranged so that one expires every year. In cases involving complaints of unauthorized practice, the statute empowers the board to conduct investigations, hold hearings, administer oaths, receive evidence, issue subpoenas, make factual and legal determinations, and enter orders consistent with the findings. See § 17-101-203(4), § 17-101-203(10). The statute also empowers the board to bring proceedings in state court to enforce the statutory provisions. See § 17-101-203(11).

The board discussed Dr. Dunham's situation during two scheduled meetings, maintained detailed minutes of each meeting, and considered investigative reports that were prepared in her case. Following the meetings, the board issued orders in the form of letters sent to Dr. Dunham and two of her employers informing them of the board's conclusion that Dr. Dunham was engaging in the practice of veterinary medicine without a proper license, and warning that the employers themselves would be subject to criminal punishment if they did not "cease and desist" from their employment of her. Dr. Dunham in fact agrees that the letters were not mere requests, but, rather, "threatened criminal prosecution and future adverse administrative action should she fail to comply ."

The letter to Dr. Dunham's first employer concluded that "[i]t is *necessary* ...for you to cease and desist from employing any person to practice veterinary medicine in this state who is not duly authorized [to do so]" (emphasis supplied). The board also subpoenaed Dr. Dunham to attend a hearing at which her second employer agreed to terminate her employment.

To the extent that the board weighed evidence, made factual determinations, determined sanctions, and issued written decisions, we conclude that these duties are functionally comparable to the duties performed by courts. See Romano, 169 F.3d at 1187.

Cf. Cleavinger v. Saxner, 474 U.S. 193, 202-06 (1985). We further conclude that the board's actions are likely to result in lawsuits for damages by disappointed parties such as Dr. Dunham, that sufficient safeguards exist in the Arkansas regulatory framework to control unconstitutional conduct, and that defendants are therefore protected by quasi-judicial immunity. See Butz, 438 U.S at 512-16; see also O'Neal v. Mississippi Board of Nursing, 113 F.3d 62, 65-66 (5th Cir. 1997).

While some of the board's functions, such as bringing an enforcement proceeding in Arkansas state court, might have been prosecutorial in nature, we note that courts have also granted absolute immunity to actors who perform such prosecutorial functions. See, e.g., Wang v. New Hampshire Board of Registration in Medicine, 55 F.3d 698, 701 (lst Cir. 1995), and Horwitz v. State Board of Medical Examiners, 822 F.2d 1508, 1515 (10th Cir. 1987); see also Mishler v. Clift, 1999 WL 692011, at #7, #15-#21 (9th Cir. Sept. 8, 1999).

We agree with the reasoning of these cases, and we note, furthermore, that Dr. Dunham produced no evidence showing that the defendants acted in non-judicial or non-prosecutorial capacities, or that they acted in "complete absence of all jurisdiction," Duty v. City of Springdale, Arkansas, 42 F.3d 460, 462 (8th Cir. 1994) (per curiam). See generally Martin v. Hendren, 127 F.3d 720, 721 (8th Cir. 1997). Since the

defendants' actions were functionally comparable to those of judges and prosecutors, they are entitled to absolute immunity .

IV.

For the foregoing reasons, we affirm the judgment of the district court.

A true copy.

Attest: CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

Counsel: Robert J. Price for Appellant; Tim Gauger, Patricia Bell and AnnaMary Dougherty for Appellees.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 99-1524EALR

Sandra K. Dunham, Dr., D.V.M.,
Appellant

Order Denying Petition for
Rehearing and for Rehearing
En Banc

George Wadley, Dr., D.V.M.,
Wingfield Martin, Everett I.
Rogers, Dr., D.V.M., G.C. Blair,
Dr., D.V.M., James W. Waymack, Dr.,
D.V.M., Donald I. Mayfield, D.,
D.V.M., Gary F. Strickland, Dr.,
D.V.M., Sherry Glover,
Appellees

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.
(5128-010199)
January 11, 2000

Order entered at the Direction of the Court:
"s/Michael E. Gans"
Clerk, U.S. Court of Appeals, Eighth Circuit

Counsel: Robert J. Price for Appellant. No response filed by counsel for Appellees..

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DR. SANDRA K. DUNHAM, D.V.M. PLAINTIFF

VS. NO. LR-C-95-432

DR. GEORGE WADLEY, D.V.M., WINGFIELD MARTIN, DR. EVERETT I. ROGERS, D.V.M., DR. G. C. BLAIR, D.V.M., DR. JAMES W. WAYMACK, D.V.M., DR. DONALD I. MAYFIELD, D.V.M., DR. GARY F. STRICKLAND, D.V.M., AND SHERRY GLOVER DEFENDANTS

AFFIDAVIT OF SANDRA K. REYNOLDS

I, Sandra K. Reynolds, first being duly sworn, do hereby state and verify the following on personal knowledge:

1. I am a veterinarian; I received my Certificate of License from the Arkansas Veterinary Medical Examining Board on July 9, 1997.

2. My father is Dr. Robert E. Dunham; he is also a licensed veterinarian who has practiced in Crossett, Arkansas for over 25 years. He was the primary inspiration for my own decision to become a

veterinarian, just as he influenced my late brother Michael's decision to become a veterinarian. My father and I both love our jobs and get a great deal of personal satisfaction from working with and helping people and animals in need.

3. I love my father just as any daughter would love her father. We were always close, and became more so after the sudden and unexpected death of Michael on October 26, 1993.

4. I am a 1991 graduate of Justus Liebig University in Giessen, W. Germany, a foreign college of veterinary medicine; I became a veterinarian upon my graduation.

5. At all times from March 3, 1992 through April 30, 1996, I was enrolled in the American Veterinary Medical Association's ECFVG program. (See Affidavit of Toni Higgins-Thrash attached hereto as Exhibit A; see Dr. Sandra K. Dunham's ECFVG Certificate, attached hereto as Exhibit B.) The Defendants were aware of these things.

6. I know that the Defendants were aware that I was so enrolled because: (1) I had specifically discussed my ECFVG status with Sherry Glover, the Executive Director of the Board; she required that I contact the AVMA and have them send a letter to her confirming my status before she would allow me to take the tests required by state law to obtain a

Certificate of License from the Board, and Ms. Glover sent me a letter informing me that she had received the AVMA letter; (2) George Wadley, the Secretary-Treasurer of the Board at the time, testified under oath on July 29, 1994 that he was aware that I was enrolled in the ECFVG program. (See letter dated March 12, 1992 from Sandra K. Dunham, D.V.M. to the American Veterinary Medical Association, attached hereto as Exhibit C; see letter dated March 17, 1992 from Toni Higgins-Thrash to Sherry Glover, attached hereto as Exhibit D; See letter dated March 13, 1992 from Sherry Glover to Sandra K. Dunham attached hereto as Exhibit E; see Exhibit F-1 attached hereto.)

7. I was employed by Dr. Gary Wallis at the Monticello Animal Clinic from on or about April 15, 1992 through on or about the Monday following August 6, 1992.

8. The Defendants were aware that I was employed by Dr. Gary Wallis at the Monticello Animal Clinic and that he was a licensed veterinarian.

9. I know that the Defendants were aware that Dr. Gary Wallis was a licensed veterinarian at the time because the Certificate of License he held was issued by the Board.

10. I know that the Defendants were aware that I worked for him because they caused a copy of a "Cease and Desist" letter dated August 6, 1992 which

they had sent to me as well as a separate "Cease and Desist" letter concerning his alleged "aiding and abetting" of my unlawful practice of veterinary medicine to be sent to him as my employer.

11. At all times from April 15, 1992 through August 6, 1992, when I was employed at the Monticello Animal Clinic, I was under the direction and supervision of a licensed veterinarian when performing duties or actions.

12. The licensed veterinarians under whose supervision I was performing duties or actions at the Monticello Animal Clinic were Gary Wallis, D.V.M., Robert E. Dunham, D.V.M., John Porrier, D.V.M., Judy Porrier, D.V.M., and Dwight Witcher, D.V.M.

13. The August 6, 1992, letter the Defendants caused to be sent to me contained the language, "It is necessary, therefore, for you to cease and desist from the practice of veterinary medicine until such time as you have fulfilled the necessary requirements and are licensed by the Board."

14. I received a copy of the August 6, 1992 letter the Defendants caused to be sent to Gary Wallis; the letter contained the language, "Dr. Dunham, therefore, is not licensed to practice veterinary medicine in the State of Arkansas," and "It is necessary, therefore, for you to cease and desist from employing any person to practice veterinary medicine

in this state who is not duly authorized by the Board to engage in such practice."

15. The Defendants did not give me any prior notice that I was accused of practicing without a license at the Monticello Animal Clinic or that they were considering the August 6, 1992 action against me.

16. I was employed by my father at the Crossett Animal Hospital from the latter half of August, 1992 through November 10, 1993.

17. The Defendants were aware that I was employed by my father at the Crossett Animal Hospital and that he was a licensed veterinarian.

18. I know that the Defendants were aware that my father was a licensed veterinarian at the time because the Certificate of License he held was issued by the Board.

19. I know that the Defendants were aware that I worked for him because they sent a second "Cease and Desist" letter to me at the Crossett Animal Hospital, and they were also accusing him of aiding and abetting my unlawful practice of veterinary medicine.

20. I know that the Defendants were aware that Robert E. Dunham is my father because

Defendant Waymack and my father formerly practiced together and my father and I were both personally acquainted with him, and both Defendant Wadley and Defendant Martin made reference to that fact in sworn testimony.

21. At all times from the latter half of August, 1992 through November 10, 1993, when I was employed at the Crossett Animal Hospital, I was under the direction and supervision of a licensed veterinarian when performing duties or actions.

22. The licensed veterinarians under whose supervision I was performing duties or actions at the Crossett Animal Hospital were Robert E. Dunham, D.V.M. (through November 10, 1993), John Porrier, D.V.M., Judy Porrier, D.V.M., and Dwight Witcher, D.V.M.

23. On or about November 9, 1993, the Defendants caused a second letter to be sent to me; the letter contained the language, "It is therefore necessary for you to cease and desist from the practice of veterinary medicine unless or until you become licensed by the Board." (See Exhibit G, attached.)

24. On November 10, 1993, the Defendants conducted a hearing in which they were to decide whether disciplinary action would be taken against the Certificate of License held by my father for, among

other things, aiding and abetting my unlawful practice.

25. I was compelled by subpoena from the Board to attend the November 10, 1993 hearing.

26. Before the conclusion of the November 10, 1993 hearing, the Board entered into an agreement with my father to resolve the disciplinary action against his Certificate of License.

27. As a part of the agreement reached between the Board and my father, he was required to agree that I would not work in the Crossett Animal Hospital as a veterinarian.

28. The Defendants did not give me any prior notice that I was accused of practicing without a license at the Crossett Animal Hospital or that they were considering the November 9, 1992 or November 10, 1993 action against me.

29. The August 6, 1992 "Cease and Desist" letters the Defendants caused to be sent to me and to my employer, Dr. Gary Wallis, caused me to lose my right to perform duties and actions under the direction and supervision of a licensed veterinarian; it also caused me to lose my job, caused me to lose the opportunity to buy a thriving veterinary clinic and practice, caused me to lose earnest money I had paid as a down payment on a house, and caused me to lose the opportunity to buy the house toward which the

earnest money was to have been applied. The "Cease and Desist" letters were the sole cause of these things. (See letters attached hereto as Exhibits H and I.)

30. The November 9, 1993 "Cease and Desist" letter the Defendants caused to be sent to me and the November 10, 1993 agreement they extracted from my father, my employer at the time, caused me to lose my right to perform duties and actions under the direction and supervision of a licensed veterinarian. The "Cease and Desist" letter and the agreement were the sole cause. (See November 10, 1993 Minutes, attached hereto as Exhibit J.)

31. While it is true that I did not contact the Board office, I did, however, contact two members of the Board.

32. I first called Dr. George Wadley, the Board's Secretary-Treasurer at the times the Defendants took action against me, at his home four times in one evening and spoke to his wife each time. I left a message each time for him to call me, but he never did. He did later testify under oath that he was aware that I had called him, but he never returned my call. (See Exhibit K, attached.)

33. I also contacted another Board member, James Waymack, at his clinic in Arkadelphia the following morning; I was able to get him on the telephone, and asked him if he knew why I received

the second "Cease and Desist" letter. He told me that he didn't know, and would only say, "You better get yourself a good lawyer."

34. I did not ask to address the Board at the hearing the Board conducted concerning my father's Certificate of License. I was only there because I was compelled to attend, having been served with a subpoena issued by the Board; but I was never called as a witness.

35. I was aware that a complaint concerning my father was before the Board, and that his ability to practice veterinary medicine in the future was at stake. I certainly did not want to say or do anything which might place his Certificate of License in jeopardy, and I did not know what was or was not proper conduct in hearings before the Board. I also have always tried to conduct myself in a cautious and conservative manner, and have been taught that if I do not know which of several choices is the correct one, do nothing until I am sure which is correct. I later became aware that for me to have attempted to discuss my situation would have been futile, in light of the Board members' refusal to discuss my situation with me.

35. I was aware that I would have to submit my application for a Certificate of License to these same people after I had completed all of the prerequisites. I was specifically warned by the Defendants in the August 6, 1992 "Cease and Desist"

letter that my alleged unauthorized practice of veterinary medicine could also reflect upon my application to practice veterinary medicine in this state in the future, and I certainly did not want to do anything that might cause me problems with them in the future.

36. The suit for an injunction the Defendants caused to be filed against me in the Chancery Court of Ashley County, Arkansas, caused me to incur substantial legal expenses in order to defend myself which I otherwise would not have incurred. (See Petition for Preliminary Injunction, attached hereto as Exhibit L.)

37. Each of the Board's several actions concerning me was based upon the Board's accusation that I was practicing without a license.

38. I have obtained through the Arkansas Freedom of Information Act copies of the various records which were created by the Defendants and maintained by the Board, including the official minutes of the Board's meetings; they contain numerous references to my having been "practicing illegally." (See copies of Board Minutes, attached hereto as Exhibit M.)

39. I have never been informed by any of the Defendants or anyone who serves on or is employed by the Board that I have been exonerated of the

charges against me, or that the references to my alleged "unlawful practice" have been purged, deleted or otherwise removed from the records of the Board or the records of any of the Defendants.

40. On March 9, 1992, I submitted my application to take the National Board Examination and/or the Clinical Competency Test to the Board through Sherry Glover; at that time, I was given no information whatsoever, either verbal or written, concerning the Arkansas Veterinary Medical Practice Act or the Rules and Regulations of the Board. (See Application for National Board Exam and/or Clinical Competency Test in Arkansas, attached hereto as Exhibit N.)

I first learned that the Arkansas Veterinary Practices Act existed and that the Board had Rules and Regulations after the Board had sued me when Dr. George Wadley, the Board's Chairman at the time, testified in a deposition that they existed in pamphlet form and produced a copy of the pamphlet. (See Exhibits F-2 and F-3, attached hereto.)

41. It was only when I submitted my application to take the Arkansas State Board Examination, well after the Board's illegal actions had ended, that I was given a pamphlet by Sherry Glover which was entitled, STATE OF ARKANSAS VETERINARY MEDICAL PRACTICE ACT AND

REGULATIONS; it bore the official seal of the State of Arkansas, and also bore the address of the Board.

42. After receiving the pamphlet, I read it carefully in order to familiarize myself with its contents; neither the Practice Act nor the Rules and Regulations contain any requirement that a person claiming to be exempt from licensure by the Board notify the Board, nor is there any requirement that anyone who claims to be performing duties or actions under the direction and supervision of a licensed veterinarian notify the Board of the identity of the supervising veterinarian or describe the manner in which the supervision is being done.

43. I was never told or otherwise given any information by any of the Defendants nor by any member or employee of the Board to the effect that any requirement existed that a person claiming to be exempt from licensure by the Board notify the Board, nor of any requirement that anyone who claims to be performing duties or actions under the direction and supervision of a licensed veterinarian notify the Board of the identity of the supervising veterinarian or describe the manner in which the supervision is being done.

44. I was never told or otherwise given any information by any of the Defendants nor by any member or employee of the Board that I had any

options other than to obey their "Cease and Desist" letters.

45. I have married, and my name is now Sandra K. Reynolds, D.V.M.

I have read the above and foregoing statements, which are true and correct to the best of my knowledge and belief.

In witness whereof, I hereunto set my hand this 22 day of June, 1998.

FURTHER AFFIANT SAITH NOT.

"s/Sandra K. Reynolds, D.V.M."

VERIFICATION

STATE OF ARKANSAS)
COUNTY OF PULASKI)

On this day appeared Sandra K. Reynolds, D.V.M., before me, a notary public, and stated on oath that the foregoing information is true and correct to the best of her knowledge and belief.

SUBSCRIBED AND SWORN to before me this 22 day of June, 1998.

"s/Shari L. Rogers", Notary Public
My Commission Expires: 1-29-2006

RELEVANT EXHIBITS AND PORTIONS OF EXHIBITS ATTACHED TO AFFIDAVIT OF SANDRA K. REYNOLDS

EXHIBIT A

AFFIDAVIT OF TONI HIGGINS-THRASH

State of Illinois)
County of Cook)

Before the undersigned, Darlene Verbelia, duly qualified and acting in and for said county and state, appeared Toni Higgins-Thrash to me well known or satisfactorily proven to be the affiant herein, who stated the following under oath:

As Coordinator of the Educational Commission for Foreign Veterinary Graduates (ECFVG) certification program, I, Toni Higgins-Thrash, verify the following on personal knowledge:

1. Dr. Sandra Dunham, 1400 Pecan Street, Crossett, AR, 71635 enrolled in the Educational Commission for Foreign Veterinary Graduates (ECFVG) program on March 3, 1992, and

2. That Dr. Sandra Dunham (address above) is still in the process toward completing the requirements for an ECFVG certificate.

The Affiant above has read the above and foregoing statements and states that they are true and correct to the best of her knowledge and belief.

In witness whereof, I hereunto set my hand this 27th day of June, 1994.

"s/Toni Higgins-Thrash"

Subscribed and sworn to before me this 27th day of June, 1994.

"s/Darlene M. Verbelia", Notary Public
My Commission Expires: May 11, 1998

EXHIBIT B

(CERTIFICATE FROM THE AMERICAN VETERINARY MEDICAL ASSOCIATION)

This is to Certify that Sandra K. Dunham has complied on the date indicated below with the requirements of the Educational Commission for Foreign Veterinary Graduates. In testimony whereof are affixed the name of the Chair of the Commission and the seal of the American Veterinary Medical

Association at Schaumburg, Illinois this 30th day of April, A.D. 1996.

"s/Clifford I. Johnson, D.V.M., M.P.H.", Chair, ECFVG

Seal of the American Veterinary Medical Association.

EXHIBIT C

CROSSETT ANIMAL CLINIC
R. E. DUNHAM, D.V.M.
1005 West First
CROSSETT, ARKANSAS 71635

March 17, 1992

American Veterinary Medical Ass'n
1931 W. Meacham Road, Suite 100
Schaumburg, IL 60173-4360
ATTN: Verification of enrollment in ECFVG Program

ATTN: Toni Higgins-Thrash
ECFVG Coordinator

Dear Mrs. Higgins-Thrash:

As per our telephone conversation of March 9, 1992, I request verification of enrollment in the ECFVG program. Can you please telephone or FAX this information and verification to the Arkansas

Veterinary Medical Ass'n., P.O. Box 21061, Little Rock, Arkansas 72221, tel.: (501) 221-1447, ATTN: Sherri Glover, no later than March 14-15. All applications and necessary verifications must be submitted to the Arkansas Board of Veterinary Medical Examiners one month prior to acceptance for the National boards and CCT.

Thank you.

Respectfully yours.

"s/Sandra K. Dunham, D.V.M."

cc: Sherri Glover

Handwritten on letter: Done; TH-T; 3/10/92; Telephone Verified (501) 224-2836.

EXHIBIT D

March 17, 1992

Sherry Glover, Executive Secretary
Arkansas Veterinary Medical
Examining Board
#1 Natural Resources Drive
P.O. Box 5497
Little Rock, AR 72215

Dear Sherry Glover:

This letter will verify that Dr. Sandra K. Dunham, 1400 Pecan Street, Crossett, AR 71635 is currently enrolled in the Educational Commission for Foreign Veterinary Graduates certificate program.

Dr. Dunham provided the necessary documentation to waive the TOEFL, TSE and TWE English language examination requirements for ECFVG program purposes.

In order to complete the ECFVG certification program, Dr. Dunham will need to successfully pass the National Board Examination and Clinical Competency Test, as well as acquire the year of evaluated clinical experience at an AVMA-accredited or -approved college of veterinary medicine, or successfully pass the Clinical Proficiency Examination.

This letter is being sent at the request of Dr. Dunham.

Sincerely,

Toni Higgins-Thrash, MPA
ECFVG Coordinator
Division of Scientific Activities

TH-T/kms
cc: Dr. Dunham

EXHIBIT E

March 13, 1992

Sandra Kay Dunham , D.V.M.
1400 Pecan Street
Crossett, AR 71635

Dr. Dunham:

Your application for the NBE and CCT was received today along with your checks in the amount of $225. In order to complete your file, we will need a copy of your veterinary college diploma from Justus-Liebig University. Also, in the letter you wrote to the AVMA requesting verification of enrollment in the ECFVG program, you gave the address of the AR VMA and not the board. If you would call them and give our Fax Number (1-501-225-9727), this should allow us to receive the information much quicker.

Sincerely,

"s/Sherry Glover", Executive Secretary

/sg
Enclosure: Receipt

EXHIBIT F-1

(PARTIAL TRANSCRIPT OF TESTIMONY PREPARED BY DEBBIE DUDLEY, CCR, LITTLE ROCK, ARKANSAS (501) 666-8122)

A. No. I talked to her mother on the phone one time. That's all.

Q. Do you remember when that was?

A. No.

Q. Do you remember what the conversation was about?

A. No, not really. It would have been – I'm not sure. It was – as I recall, it was – she just had some questions about some things. I don't recall exactly what it – what it covered and all.

Q. Do you recall if it related to Dr. Sandra Dunham or to someone else?

A. Well, I – no, I really don't. I assume that it related to both Dr. Dunham – Mr. – you know, her father and to her both, but I'm – but I'm not – I'm not at all sure at this point in time.

Q. Do you remember if she initiated the contact or if you did?

A. Her mother. Her mother did.

Q. As we sit here today, do you have any knowledge about Dr. Dunham – and from now on when I say "Dr. Dunham," I mean Dr. Sandra K. Dunham – about Dr. Dunham's educational background?

A. I know in a very vague general way that she went to veterinary school in Germany. That's about it.

Q. Do you know whether she obtained a degree over there?

A. Well, I'm sure she did because she's in the process of going through the ECFVG program.

Q. And ECFVG means Educational Commission for Foreign Veterinary Graduates certificate?

A. Right.

Q. What information, if any, do you have concerning Dr. Dunham's professional activities?

A. The only information I have is information that was supplied by an investigator. That would be the only information I have.

Q. You heard Wade Hodge –

A. And I don't have that information now, because I don't have access to it anymore.

Q. You heard Wade Hodge give a deposition just a moment ago?

A. Yes.

Q. You heard us discussing Exhibit C to the Petition that was filed in Chancery Court in Ashley County?

A. Yes.

Q. The two-page report titled Investigator's Notes, is that what you're referring to just now?

A. Yes.

Q. Other than that, do you have any factual information concerning Dr. Dunham's activities, whether it be in writing, verbal, or otherwise?

A. The only other information that I'm aware of was an. . .

EXHIBIT F-2

(PARTIAL TRANSCRIPT OF TESTIMONY PREPARED BY DEBBIE DUDLEY, CCR, LITTLE ROCK, ARKANSAS (501) 666-8122)

Q. . . .regulations of the Board, meaning the Arkansas Veterinary Medical Examining Board, that regulates the practice of veterinary medicine in Arkansas? Stated differently, does that act contain it all – I mean, that pamphlet that you're holding?

A. It contains all of the Board's authority. I remember there is a Rabies Control Act that the veterinarians have to comply with also, and that's administered by the State Health Department. But as far as the Board is concerned, where they receive their authority is from this practice act right here.

MR. PRICE: Madam Court Reporter, please attach that to the deposition as Exhibit A. We'll attach the Petition for Preliminary Injunction, the affidavit attached to it identified by the witness, and Exhibits A, B, and C all collectively as Exhibit 2.

(Deposition Exhibits A and 2 were marked.)

Q. (By Mr. Price) Do you know if the Board has promulgated any rules and regulations since that pamphlet was in print?

A. No, they have not. To my knowledge they have not. Remember that I'm not on the Board anymore, and they've had a couple of meetings since I went off. So up until the time I was on it they had not.

Q. When did you go off the Board?

A. This spring.

Q. Do you remember the date?

* * *

A. Yes.

Q. However they came into being, they did so while you were there?

A. Right. Any according to state law, which I'm not all that familiar with, but I know that our rules and regulations had to go back to the legislature and be approved along with the – and that was after the practice act was approved, sort of a whole ball of wax. They do it in steps, but –

Q. But that pamphlet right now says it all and did at the time this suit was filed?

A. Yes.

Q. Does everyone in Arkansas, every person who purports to practice veterinary medicine, have to be licensed by the Board?

A. There are exceptions in the practice act that you can read for yourself and it will tell you who's exempted from it.

Q. Lists them specifically by category?

A. Yes, and what they can and what they can't do.

Q. Does the Board have any regulations in force which define any of those exemptions or regulate the practice of persons who are exempt under the act?

A. It's all right there.

Q. So if they do, it would be in that pamphlet?

A. It's all in the act or the rules and regulations.

MR. PRICE: Take about a five-minute break. I think I'm out of gas.

EXHIBIT F-3

STATE OF ARKANSAS, VETERINARY MEDICAL PRACTICE ACT AND REGULATIONS

Veterinary Medical Examining Board, #1 Natural Resources Drive, P.O. Box 5497, Little Rock, Arkansas 72215.

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* * *

RULES AND REGULATIONS OF THE ARKANSAS VETERINARY MEDICAL EXAMINING BOARD

(Adopted: 12/1/76) (Amended 6/23/93)

1. For the purpose of the Rules and Regulations contained herein, the term "Board" means the Veterinary Medical Examining Board.

2. The principal office of the Board is located at the Natural Resources Complex, One Natural Resources Drive, P.O. Box 5497, Little Rock, Arkansas 72115.

3. Pursuant to the authority granted the Veterinary Medical Examining Board by Act 60 of 1987, the Board creates a specialty area in poultry practice. Persons seeking licensure under this provision will be tested only in the area of poultry medicine. A person who is issued a Poultry Specialty Area license will not be allowed to practice any other form of veterinary medicine.

4. Each person holding a certificate of registration, license (general or specialty), permit or any other authority to practice veterinary medicine or engage in any activity in the State of Arkansas under any and all laws administered by the Board shall file his proper and current mailing address with the Board at its principal office and shall immediately notify the

Board at its said principal office of any and all changes of mailing address, giving both his old and his new address.

* * *

COMPLAINTS, HEARINGS
(Adopted: 12/1/76) (Amended: 5/24/88)

16. Any and all complaints within the jurisdiction of the Board must be in writing, dated and signed by the complainant, notarized and filed with the Secretary-Treasurer of the Board. The Secretary-Treasurer, upon receiving such complaint, may proceed to investigate said complaint and may take statements from any person thought to have knowledge of any fac(s) pertaining thereto.

17. Any and every complaint making out a prima facie case shall be presented to and reasonably disposed of by the Board, giving due consideration to sufficient and necessary time to investigate and consider the complaint.

18. Disciplinary hearings may be conducted either on the Board's own motion or based on a written complaint if a violation of the Veterinary Medical Practice Act has been discovered.

* * *

EXHIBIT G

November 9, 1993

Sandra K. Dunham
Crossett Animal Clinic
1005 West First
Crossett, AR 71635

Dear Ms. Dunham:

I am again writing to you in my capacity as attorney for the Arkansas Veterinary Medical Examining Board. It has been once again brought to the attention of the Board that you are practicing veterinary medicine without being licensed by the Board. Pursuant to A.C.A. §17-99-101 et seq., one must be licensed in order to lawfully practice veterinary medicine in this state.

It is therefore necessary for you to cease and desist from the practice of veterinary medicine unless or until you become licensed by the Board.

Please be advised that the unauthorized practice of veterinary medicine is punishable by a fine of up to $250.00 and/or up to one year imprisonment. Each day of unlawful practice constitutes a separate offense.

This is your second notice to cease and desist from the unauthorized practice of veterinary medicine. Continued noncompliance on your art could result in a lawsuit being filed against you. If you have any questions, please contact the Board office at 224-2836.

Sincerely,

"s/M. Wade Hodge", Assistant Attorney General

cc: Sherry Glover, Arkansas Veterinary
Medical Examining Board

EXHIBIT H

August 6, 1992

Dr. Sandra Dunham
Monticello Animal Clinic
109 Highway 425 South
Monticello, AR 71655

Dear Dr. Dunham:

I am writing to you in my capacity as attorney for the Arkansas Veterinary Medical Examining Board. The Board has information and belief that you are engaging in the practice of veterinary medicine without proper licensure.

It is necessary, therefore, for you to cease and desist from the practice of veterinary medicine until such time as you have fulfilled the necessary requirements and are licensed by the Board.

Please be advised that the practice of veterinary medicine without a license is punishable by a fine of up to $250 for each and every offense and/or imprisonment for up to one year. Unauthorized practice could also reflect upon your application to practice veterinary medicine in this state in the future.

If you have any questions, please call the Board office at 224-2836.

Sincerely,

"s/M. Wade Hodge", Assistant Attorney General

MWH:dc
cc: Sherry Glover
Gary G. Wallis, D.V.M.

Handwritten: cc: Board members, 8-10-92

EXHIBIT I

August 6, 1992

Gary G. Wallis, D.V.M.
Park Hill Pet Clinic
2900 Main
North Little Rock, AR 72116

Dear Dr. Wallis:

I am writing to you in my capacity as attorney for the Arkansas Veterinary Medical Examining Board. The Board has information and belief that you have employed an individual who is practicing veterinary medicine unlawfully.

It has come to the Board's attention that Dr. Sandra Dunham is employed by you at your clinic located at 109 Highway 425 South in Monticello, Arkansas. Please be advised that Dr. Dunham took the National Board Exam and CCT in April of 1992 and passed the CCT but did not pass the NBE. Dr. Dunham, therefore, is not licensed to practice veterinary medicine in the State of Arkansas.

Please be advised that Ark. Code Ann. §17-99-307(a)(6) provides that having professional association with or employing, any person practicing veterinary medicine unlawfully is grounds for

disciplinary action including a civil penalty of up to $5000 and or suspension or revocation of licensure.

It is necessary, therefore, for you to cease and desist from employing any person to practice veterinary medicine in this state who is not duly authorized by the Board to engage in such practice.

If you have any questions, you may call the Board office at 224-2836.

Sincerely,

"s/M. Wade Hodge", Assistant Attorney General

MWH:dc
cc: Sherry Glover
Dr. Sandra Dunham

Handwritten: cc: Board Members, 8-10-92

EXHIBIT J

STATE OF ARKANSAS
VETERINARY MEDICAL EXAMINING BOARD
ONE NATURAL RESOURCES DRIVE
LITTLE ROCK, AR 72205

MINUTES

A special meeting of the Arkansas Veterinary Medical Examining Board was called on Wednesday, November 10, 1993, in the Conference Room of the Livesto k & Poultry Commission Building, One Natural Resources Drive, Little Rock, AR. The purpose of this meeting was to hold a formal hearing and conduct board business.

CALL TO ORDER:

All board members having been duly notified, Chairman James W. Waymack, D.V.M., called the meeting to order at 9:00 AM on November 10, 1993.

PRESENT:

George R. Wadley, D.V.M.	Secretary-Treasurer
James W. Waymack, D.V.M.	Chairman
G. C. Blair, D.V.M.	Member
Wingfield Martin	Public Member
Donald I. Mayfield, D.V.M.	Member

IN ATTENDANCE:

Sherry Glover	Executive Secretary
Wade Hodge	Asst. Atty. General
Jack Kearney	Hearing Officer
Robert E. Dunham, D.V.M.	Respondent
Billy Hubbell	Respondent's Atty.

Ms. Amy Blevins	Complainant
Denny Bishop	Board Investigator, Witness
Chris Anderson	D.I.U. Investigator, Witness
Verna Williams	Court Reporter
Sandra Dunham, D.V.M.	
Steven Dunham	

FORMAL HEARING - ROBERT E. DUNHAM, D.V.M. (CROSSETT):

A formal hearing was called based on a complaint from Ms. Amy Blevins and investigative reports from the board investigator, Denny Bishop, and D. I. U. investigator, Chris Anderson, advising that Dr. Dunham encouraged or otherwise aided and abetted unlicensed persons to engage in the practice of veterinary medicine in that his son, Mike, and daughter, Sandra, were practicing in Dr. Dunham's clinic. Mr. Anderson's investigative report also advised that Dr. Dunham keeps no records of controlled substances and uses Valium and Demoral and/or other drugs.

Dr. Dunham's attorney, Billy Hubbell, requested a conference with the board's attorney, Wade Hodge, before the hearing began. At the conclusion of this conference, Mr. Hubbell advised the board that Dr. Dunham would offer to surrender his license to practice veterinary medicine for a period of one year

subject to his being allowed to apply for reinstatement at the end of that time.

Mr. Hubbell assured the board that Dr. Dunham would (1) participate in a drug rehabilitation program and submit to random drug tests, (2) pay the bill submitted by Dr. mike Cummings in the amount of $1,248.91 within 30 days of the date of the Order, (3) would close his clinic unless or until a licensed veterinarian is on site and the board has been advised the name of this veterinarian, (4) would have all controlled drugs removed from his clinic and placed in the keeping of Mr. Hubbell until they are picked up by D. I. U. or D. E. A., and (5) assure the board that Sandra Dunham would not work in the clinic as a veterinarian. Mr. Hodge advised that if Ms. Dunham continued to practice as a veterinarian an injunction would be filed. Mr. Hubbell assured the board that Ms. Dunham would obey the cease and desist orders from the Office of the Attorney General (one mailed on 8/6/93 and a second on 11/9/93 - a cease and desist letter was not sent to Mike Dunham as he died during the first week of November, 1993).

The board, by a 4 to 0 vote (Dr. Waymack excused himself from participating in the hearing and voting), accepted the terms of the agreement.

MINUTES:

Motion was made, seconded and passed unanimously to approve the minutes of the October 27, 1993, meeting with an addition to include the statement that Dr. Bradley's husband was instructed to give his name, Fred Hendricks, when returning emergency calls or giving instructions to clients.

* * *

EXHIBIT K

(PARTIAL TRANSCRIPT OF TESTIMONY PREPARED BY DEBBIE DUDLEY, CCR, LITTLE ROCK, ARKANSAS (501) 666-8122)

A. . . .afternoon late or something like that. And, you know, it was one of those spur of the moment things that you don't take notes or anything like that; and so, no, I don't really – I don't really remember what all we talked about and everything.

Q. Do you know whether or not Dr. Sandra Dunham ever tried to contact you concerning any of these matters going on between the Board and her?

A. I have a vague recollection that she called my house one time, and I was supposed to call back by a certain time or something like that. And I didn't

get home within that timetable, so I never returned the call.

Q. And was that since this Complaint was filed, or do you know? And I'm talking about the action in Chancery court now when I say "Complaint."

A. I cannot remember when that – when that was. I remember it was this year, but I don't remember if it was before a certain date or after a certain date.

Q. Did you discuss Dr. Sandra Dunham's professional activities with any other board members?

A. Only in a board meeting.

Q. Can you remember what the gist of those discussions would have been?

A. The gist would have been that I couldn't – the Board couldn't understand why in the light of receiving two cease and desist letters that she would continue to practice as the – as. . .

EXHIBIT L

IN THE CHANCERY COURT OF ASHLEY COUNTY, ARKANSAS

ARKANSAS VETERINARY MEDICAL EXAMINING BOARD PLAINTIFF

VS. NO. 94-147-2

SANDRA K. DUNHAM DEFENDANT

PETITION FOR PRELIMINARY INJUNCTION

(Filed April 20, 1994)

Comes now the Arkansas Veterinary Medical Examining Board (Board), and in support of its Petition for Preliminary Injunction states as follows:

1. Plaintiff is an agency created by he Arkansas Legislature and empowered with the duties and responsibilities outlined in A.C.A. §17-99-101 et seq.

2. Defendant is a resident of Ashley County and therefore jurisdiction and venue are proper in Ashley County Chancery Court.

3. Plaintiff seeks a preliminary injunction requiring the defendant to cease the unauthorized

practice of veterinary medicine in the State of Arkansas.

4. Pursuant to A.C.A. §17-99-301, any person not licensed by plaintiff is prohibited from the practice of veterinary medicine in this state. Defendant is not now, nor has she ever been, licensed by the plaintiff.

5. Defendant has been repeatedly warned and ordered by plaintiff to stop the unauthorized practice of veterinary medicine. Attached hereto as Exhibit "A" and "B" are cease and desist letters written to defendant on behalf of the plaintiff.

6. Attached hereto and incorporated by reference herein is a statement of a state police investigator who witnessed the defendant treating an animal, marked as Exhibit "C".

7. The irreparable harm to the general welfare of the State of Arkansas far outweighs the harm which would result to the defendant if the court were to grant the requested injunctive relief.

8. Plaintiff is likely to succeed on the merits of its claim that defendant has violated applicable laws and regulations in this case.

9. The preliminary injunction is the only means available to adequately protect the public interest in this case.

10. Pursuant to A.C.A. §17-99-302(d) the unlawful practice of veterinary medicine is declare to be a public nuisance, and therefore the granting of the requested preliminary injunction would be in the public interest.

11. Plaintiff's request that an immediate preliminary injunction be ordered and further request a full hearing on the merits be set at the court's earliest possible convenience.

WHEREFORE, plaintiff respectfully request this court issue an immediate preliminary injunction requiring the defendant to cease the unauthorized practice of veterinary medicine in order to protect the general welfare of the state, and to further order the defendant to comply with all applicable statutes and regulations, and for all other just and proper relief.

"s/M. Wade Hodge"
Assistant Attorney General
323 Center St., Suite 200
Little Rock, AR 72201-2610
(501) 682-2007
Attorneys for Plaintiff

Certificate of Service dated April 19, 1994 to Sandra K. Dunham, Crossett Animal Clinic, 1005 West First, Crossett, AR 71655 by U. S. Mail, postage prepaid.
"s/M. Wade Hodge"

AFFIDAVIT

(Attached to Complaint)

My name is George R. Wadley. I am the Secretary-Treasurer of the Arkansas Veterinary Medical Examining Board. I have read the foregoing and it is true to the best of my knowledge and belief.

ARKANSAS VETERINARY MEDICAL
EXAMINING BOARD
"s/George R. Wadley, D.V.M."

STATE OF ARKANSAS)
)ss
COUNTY OF PULASKI)

SUBSCRIBED and sworn to me this 31st day of March, 1994.

"s/Karen H. Gray", Notary Public
My Commission Expires: August 1, 1996

EXHIBIT A

(Attached to Complaint)

August 6, 1992

Dr. Sandra Dunham
Monticello Animal Clinic
109 Highway 425 South
Monticello, AR 71655

Dear Dr. Dunham:

I am writing to you in my capacity as attorney for the Arkansas Veterinary Medical Examining Board. The Board has information and belief that you are engaging in the practice of veterinary medicine without proper licensure.

It is necessary, therefore, for you to cease and desist from the practice of veterinary medicine until such time as you have fulfilled the necessary requirements and are licensed by the Board.

Please be advised that the practice of veterinary medicine without a license is punishable by a fine of up to $250 for each and every offense and/or imprisonment for up to one year. Unauthorized practice could also reflect upon your application to practice veterinary medicine in this state in the future.

If you have any questions, please call the Board office at 224-2836.

Sincerely,

"s/M. Wade Hodge", Assistant Attorney General

MWH:dc
cc: Sherry Glover
Gary G. Wallis, D.V.M.

EXHIBIT B

(Attached to Complaint)

November 9, 1993

Sandra K. Dunham
Crossett Animal Clinic
1005 West First
Crossett, AR 71635

Dear Ms. Dunham:

I am again writing to you in my capacity as attorney for the Arkansas Veterinary Medical Examining Board. It has been once again brought to the attention of the Board that you are practicing veterinary medicine without being licensed by the Board. Pursuant to A.C.A. §17-99-101 et seq., one must be

licensed in order to lawfully practice veterinary medicine in this state.

It is therefore necessary for you to cease and desist from the practice of veterinary medicine unless or until you become licensed by the Board.

Please be advised that the unauthorized practice of veterinary medicine is punishable by a fine of up to $250.00 and/or up to one year imprisonment. Each day of unlawful practice constitutes a separate offense.

This is your second notice to cease and desist from the unauthorized practice of veterinary medicine. Continued noncompliance on your art could result in a lawsuit being filed against you. If you have any questions, please contact the Board office at 224-2836.

Sincerely,

"s/M. Wade Hodge", Assistant Attorney General

cc: Sherry Glover, Arkansas Veterinary
Medical Examining Board

EXHIBIT C

(Attached to Complaint)

CRIMINAL INVESTIGATION DIVISION
ASP-3-A

(Stamped Feb. 25, 1994, Arkansas Veterinary Medical Examining Board)

DATE:	FEBRUARY 9, 1994
DICTATED BY:	INV. J. DIGMAN
DATE TYPED:	FEBRUARY 23, 1994 PC
COPIES TO:	INV. J. DIGMAN
	INV. CHRIS ANDERSON

INVESTIGATOR'S NOTES

On February 3, 1994, at 2:35 p.m., this investigator observed a white female bring in three dogs to be treated at the Dunham Veterinary Clinic in Crossett, Arkansas. The dogs were called" Rusty, Nicki, and Tiffany.

SANDRA DUNHAM told the lady that one of the dogs sounded like it had kennel cough. Ms. DUNHAM told the female that she would administer a shot for the cough and would check for heart worms.

This investigator observed Ms. DUNHAM stick a syringe into a small vial and withdraw medication and

administer it to the dog which was a red colored poodle.

Later, Ms. DUNHAM drew blood from the dog and placed it in a vial.

After the dogs were treated and the lady that brought them in was leaving, this investigator excused himself to go to the car. At that time, the lady left driving a vehicle displaying Arkansas license WK0545. ACIC records indicate that the license was issued to JERRY and KATHY SMITH, P.O. BOX 308, Crossett, Arkansas.

A veterinary supply calendar for 1994 is on the wall inside the receptionist area. The name on the calendar is Miller Veterinary Supply out of Fort Worth, Texas, phone 817-335-0891. There is a possibility that the Dunham Veterinary Clinic is getting their medical supplies through Miller Vet Supply.

A note was observed on the front door of the veterinary clinic indicating that a Dr. JUDY POINRIER, DVM, is the doctor in charge of the Dunham Veterinary Clinic.

FILE NUMBER: 90-093-93
CRIME: OBT. C/S BY DECEPTION

(Handwritten: cc: Board Members, Wade, 2-25-94)

ASP-3
PAGE 2 (INVESTIGATOR'S NOTES)

At the time Ms. DUNHAM was administering the medication to the dog, the only people inside the clinic were Ms. DUNHAM, the white female that brought the dogs in, and myself. As Ms. DUNHAM began to pull he blood from the dog, her brother, STEVEN LEE DUNHAM, came into the office.

FILE NUMBER: 90-093-93
CRIME: OBT. C/S BY DECEPTION

EXHIBIT M

STATE OF ARKANSAS
VETERINARY MEDICAL EXAMINING BOARD
CHAMBER OF COMMERCE OFFICE
200 SOUTH SPRING
SEARCY, AR 72143

AGENDA

July 22, 1992

9:00 AM

I. Call to Order
II. Approve Minutes of July 13-14, 1992 Board Meeting

III. Approve Corporate Practice #0050 (name change from Bozeman Veterinary Clinic to Davenport Veterinarian Clinic)

IV. Practicing-Without-License:

A. Sandra K. Dunham, D.V.M. (Foreign Graduate - West Germany - did not pass the NBE given in April, 1992 - is working for Monticello Animal Clinic, 109 Highway 425 South, Monticello, AR)

V. Practice Act Changes

STATE OF ARKANSAS
VETERINARY MEDICAL EXAMINING BOARD
CHAMBER OF COMMERCE OFFICE
200 SOUTH SPRING
SEARCY, AR 72143

MINUTES

July 22, 1992

A special meeting of the Arkansas Veterinary Medical Examining Board was held Wednesday, July 22, 1992, in the Conference Room of the Searcy Chamber of Commerce, 200 South Spring, Searcy, AR. The purpose of this meeting was to conduct board business and discuss revisions in the Veterinary Medical Practice Act.

CALL TO ORDER:

All board members having been duly notified of the meeting, Chairman Everett I. Rogers, D.V.M., called the meeting to order at 9:10 AM on Wednesday, July 22, 1992.

PRESENT:

George R. Wadley, D.V.M.	Secretary-Treasurer
Everett I. Rogers, D.V.M.	Chairman
James W. Waymack, D.V.M.	Member
Mr. Wingfield Martin	Public Member
G. C. Blair, D.V.M.	Member

IN ATTENDANCE:

Sherry Glover	Executive Secretary

MINUTES:

Motion was made and seconded to approve the July 13-14, 1992, minutes as written. The motion passed unanimously.

PRACTICING-WITHOUT-LICENSE:

Dr. Waymack advised the board that Sandra Dunham is practicing at Monticello Animal Clinic (owned by Dr. Gary G. Wallis, D.V.M.). Dr. Dunham graduated from veterinary school in West Germany in 1992; she

took the National board Exam and CCT in April, 1992, in Arkansas and passed the CCT but did not pass the NBE, therefore, the board could not issue a Temporary Permit. Motion was made, seconded and passed unanimously to ask Wade Hodge, Assistant Attorney General, to write a cease and desist letter to Dr. Dunham with a copy to Dr. Wallis and an aiding and abetting letter to Dr. Wallis with a copy to Dr. Dunham.

As soon as these letters are written, the board will notify Rabies Control that Dr. Dunham conducted a vaccination clinic in Hamburg in May of this year and advise them that she is not licensed to practice veterinary medicine in the State of Arkansas.

The investigator for the board, Denny Bishop, will be asked to visit Monticello Animal Clinic 3-4 weeks after the cease and desist letter is received to ascertain if Dr. Dunham and Dr. Wallis have complied with the order.

ADJOURNMENT:

There being no further business to discuss, Chairman Everett Rogers, D.V.M., adjourned the meeting at 5:00 PM on July 22, 1992.

Respectfully submitted,

"s/Sherry Glover", Executive Secretary
"s/George R. Wadley, D.V.M.", Secretary-Treasurer

STATE OF ARKANSAS
VETERINARY MEDICAL EXAMINING BOARD

DATE: JULY 20, 1992

FROM: SHERRY GLOVER, EXECUTIVE SECRETARY

TO: State Capitol Press Office
State Capitol
LR, AR 72201

Associated Press
1101 West Second
Little Rock, AR 72201

UPI
2651 N. Hardwood, #130
Dallas, TX 75201-1501

KARN Radio
4021 West 8th Street
LR, AR 72204

Arkansas VMA
P.O. Box 21061
LR, AR 72212

Anthony Kimbrough
Donrey Newspapers
c/o State Capitol Press Office
LR, AR 72201

The Veterinary Medical Examining Board will hold a special meeting on July 22, 1992, at the Chamber of Commerce Office, 200 South Spring, Searcy, AR 72143 at 9:00 AM. The purpose of this meeting is to make revisions in the Veterinary Medical Practices Act.

STATE OF ARKANSAS
VETERINARY MEDICAL EXAMINING BOARD
ONE NATURAL RESOURCES DRIVE
LITTLE ROCK, AR 72205

AGENDA

October 6, 1992

9:00 AM

I. Call to Order
II. Approve Minutes of July 22, 1992, Board Meeting

* * *

X. Practicing-Without-License:

A. Mrs. Frances Denton (El Dorado) - Report from Denny Bishop
B. Barbara Page, D.V.M. (Caddo Gap) - Report from DEA and Denny Bishop
C. William L. Schmidt (Hot Springs) - Equine Chiropractic Acupuncture
D. Sandra Dunham, D.V.M. - Update
E. Billy Butler, D.V.M. (Brownsville, TN)

STATE OF ARKANSAS
VETERINARY MEDICAL EXAMINING BOARD
ONE NATURAL RESOURCES DRIVE
LITTLE ROCK, AR 72205

MINUTES

October 6, 1992

A regularly scheduled meeting of the Arkansas Veterinary Medical Examining Board was held Tuesday, October 6, 1992, in the Conference Room of the Arkansas Livestock & Poultry Commission Building, One Natural Resources Drive, Little Rock, AR.

CALL TO ORDER:

All board members having been duly notified of the meeting, acting chairman, Dr. George Wadley, called the meeting to order at 9:05 AM. Dr. Wadley chaired the meeting until the arrival of Dr. Everett Rogers at 10:15 AM.

PRESENT:

George R. Wadley, D.V.M.	Secretary-Treasurer
Everett I. Rogers, D.V.M.	Chairman
James W. Waymack, D.V.M.	Member
Mr. Wingfield Martin	Public Member
G. C. Blair, D.V.M.	Member

IN ATTENDANCE:

Sherry Glover	Executive Secretary
Mr. Wade Hodge	Asst. Atty. General
Robert J. VanPatter, D.V.M.	Little Rock Vet.
B. Sharon Holman, D.V.M.	Little Rock Vet.

MINUTES:

Motion was made, seconded and passed unanimously to approve the July 22, 1992 minutes as written.

* * *

PRACTICING-WITHOUT-LICENSE:

* * *

Sandra Dunham, D.V.M. - during our July 22, 1992, meeting, it was the decision of the board to ask the Office of the Attorney General to write a cease and desist letter to Dr. Dunham (the letter was written on August 6). Dr. Thomas McChesney, Rabies Control, was notified that Dr. Dunham had conducted a rabies clinic in Hamburg. Dr. McChesney talked with Dr. Robert E. Dunham in Crossett who advised that he assisted his daughter at this rabies clinic and signed all the certificates; his office is investigating this matter and will notify our board.

* * *

ADJOURNMENT:

There being no further business to discuss, Chairman Everett Rogers, D.V.M., adjourned the meeting at 5:45 PM on October 6, 1992.

Respectfully submitted,

"s/Sherry Glover", Executive Secretary
"s/George R. Wadley, D.V.M.", Secretary-Treasurer

STATE OF ARKANSAS
VETERINARY MEDICAL EXAMINING BOARD

DATE: September 22, 1992

FROM: SHERRY GLOVER, EXECUTIVE SECRETARY

TO: State Capitol Press Office
State Capitol
LR, AR 72201

Associated Press
1101 West Second
Little Rock, AR 72201

UPI
2651 N. Hardwood, #130
Dallas, TX 75201-1501

KARN Radio
4021 West 8th Street
LR, AR 72204

Arkansas VMA
P.O. Box 21061
LR, AR 72212

Anthony Kimbrough
Donrey Newspapers
c/o State Capitol Press Office
LR, AR 72201

The Veterinary Medical Examining Board will hold a regularly scheduled meeting on October 6, 1992, in the Conference Room of the Livestock & Poultry Commission Building, One Natural Resources Drive, Little Rock, AR at 9:00 AM.

EXHIBIT N

APPLICATION FOR NATIONAL BOARD EXAM AND/OR CLINICAL COMPETENCY TEST IN ARKANSAS

Name: Dunham, Sandra Kay

Business Address: 1005 W. 1st Ave., Crossett, AR 71635.

Home Address: 1400 Pecan Street, Crossett, AR 71635

Telephone (business): 364-5116, (home) 364-8306

Do you plan to take the National Board Exam in Arkansas? Yes. If "YES" make check or money order payable to the Arkansas Veterinary Medical

Exam Board in the amount of $125.00 (there will be no refund on this fee).

Have you taken the National Board Exam before? No.

Do you plan to take the CCT in Arkansas? Yes. If "YES" make check or money order payable to the Arkansas Veterinary Medical Exam Board in the amount of $100.00 (there will be no refund on this fee).

Have you taken the Clinical Competency Test before? No.

Description of applicant: Height, 5-06; Weight, 130; Color of Eyes, blue; Color of Hair, light brown; Approximate date of photo, November, 1991 (photo attached); Veterinary School, Justus-Liebig-University, Giessen W. Germany; Year of Graduation, 1991; Social Security No., 429-25-3366.

I, Sandra K. Dunham, D.V.M., hereby certify that I am the person named on this application and that the enclosed photo is a true one of me.

"s/Sandra K. Dunham, D.V.M."; dated March 9, 1992

RETURN TO: AR Veterinary Medical Exam Board, P.O. Box 5497, Little Rock, AR 72215, (501) 224-2836

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DR. SANDRA K. DUNHAM, D.V.M. PLAINTIFF

VS. NO. LR-C-95-432

DR. GEORGE WADLEY, D.V.M., WINGFIELD MARTIN, DR. EVERETT I. ROGERS, D.V.M., DR. G. C. BLAIR, D.V.M., DR. JAMES W. WAYMACK, D.V.M., DR. DONALD I. MAYFIELD, D.V.M., DR. GARY F. STRICKLAND, D.V.M., AND SHERRY GLOVER DEFENDANTS

AFFIDAVIT OF JUDY PORRIER

I, Judy Porrier, first being duly sworn, do hereby state and verify the following on personal knowledge:

1. I am a licensed veterinarian; I have held a Certificate of License from the Arkansas Veterinary Medical Examining Board at all times since April 15, 1992.

2. Sandra K. Dunham is a veterinarian who was employed by Dr. Gary Wallis at the Monticello Animal Clinic from on or about April 15, 1992 through on or about the Monday following August 6, 1992.

3. Sandra K. Dunham was employed by Dr. Robert E. Dunham at the Crossett Animal Hospital from the latter half of August, 1992 through November 10, 1993 as a veterinarian.

4. At all times from April 15, 1992 through April 30, 1996, when she was employed at either the Monticello Animal Clinic or the Crossett Animal Hospital, Sandra K. Dunham was under my direction and supervision when performing duties or actions at either the Monticello Animal Clinic or the Crossett Animal Hospital.

5. At all times from April 15, 1992 through April 30, 1996, I was available, either in person or by telephone, to provide direction, supervision, guidance, assistance or advice to Dr. Dunham. On a number of occasions during that time, she did contact me with questions, all of which I answered; I was also physically present to assist her with specific procedures on occasion at her request.

6. At no time after April 15, 1992 did anyone contact me on behalf of the Arkansas Veterinary

Medical Examining Board to inquire about the status of Dr. Sandra K. Dunham's supervision.

I have read the above and foregoing statements, which are true and correct to the best of my knowledge and belief.

In witness whereof, I hereunto set my hand this 22 day of June, 1998.

FURTHER AFFIANT SAITH NOT.

"s/Judy Porrier, D.V.M."

VERIFICATION

STATE OF ARKANSAS)
COUNTY OF Pulaski)

On this day appeared Judy Porrier before me, a notary public, and stated on oath that the foregoing information is true and correct to the best of her knowledge and belief.

SUBSCRIBED AND SWORN to before me this 22 day of June, 1998.

"s/Shari L. Rogers", Notary Public
My Commission Expires: 1-29-2006

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DR. SANDRA K. DUNHAM, D.V.M. PLAINTIFF

VS. NO. LR-C-95-432

DR. GEORGE WADLEY, D.V.M., WINGFIELD MARTIN, DR. EVERETT I. ROGERS, D.V.M., DR. G. C. BLAIR, D.V.M., DR. JAMES W. WAYMACK, D.V.M., DR. DONALD I. MAYFIELD, D.V.M., DR. GARY F. STRICKLAND, D.V.M., AND SHERRY GLOVER DEFENDANTS

AFFIDAVIT OF JOHN PORRIER

I, John Porrier, first being duly sworn, do hereby state and verify the following on personal knowledge:

1. I am a licensed veterinarian; I have held a Certificate of License from the Arkansas Veterinary Medical Examining Board at all times since April 15, 1992.

2. Sandra K. Dunham is a veterinarian who was employed by Dr. Gary Wallis at the Monticello Animal Clinic from on or about April 15, 1992

through on or about the Monday following August 6, 1992.

3. Sandra K. Dunham was employed by Dr. Robert E. Dunham at the Crossett Animal Hospital from the latter half of August, 1992 through November 10, 1993 as a veterinarian.

4. At all times from April 15, 1992 through April 30, 1996, when she was employed at either the Monticello Animal Clinic or the Crossett Animal Hospital, Sandra K. Dunham was under my direction and supervision when performing duties or actions at either the Monticello Animal Clinic or the Crossett Animal Hospital.

5. At all times from April 15, 1992 through April 30, 1996, I was available, either in person or by telephone, to provide direction, supervision, guidance, assistance or advice to Dr. Dunham. On a number of occasions during that time, she did contact me with questions, all of which I answered; I was also physically present to assist her with specific procedures on occasion at her request.

6. At no time after April 15, 1992 did anyone contact me on behalf of the Arkansas Veterinary Medical Examining Board to inquire about the status of Dr. Sandra K. Dunham's supervision.

I have read the above and foregoing statements, which are true and correct to the best of my knowledge and belief.

In witness whereof, I hereunto set my hand this 22 day of June, 1998.

FURTHER AFFIANT SAITH NOT.

"s/John Porrier"

VERIFICATION

STATE OF ARKANSAS)
COUNTY OF PULASKI)

On this day appeared John Porrier before me, a notary public, and stated on oath that the foregoing information is true and correct to the best of his knowledge and belief.

SUBSCRIBED AND SWORN to before me this 22 day of June, 1998.

"s/Shari L. Rogers", Notary Public
My Commission Expires: 1-29-2006

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DR. SANDRA K. DUNHAM, D.V.M. PLAINTIFF

VS. NO. LR-C-95-432

DR. GEORGE WADLEY, D.V.M., WINGFIELD MARTIN, DR. EVERETT I. ROGERS, D.V.M., DR. G. C. BLAIR, D.V.M., DR. JAMES W. WAYMACK, D.V.M., DR. DONALD I. MAYFIELD, D.V.M., DR. GARY F. STRICKLAND, D.V.M., AND SHERRY GLOVER DEFENDANTS

AFFIDAVIT OF DWIGHT WITCHER

I, Dwight Witcher, first being duly sworn, do hereby state and verify the following on personal knowledge:

1. I am a licensed veterinarian; I have held a Certificate of License from the Arkansas Veterinary Medical Examining Board at all times since April 15, 1992.

2. Sandra K. Dunham is a veterinarian who was employed by Dr. Gary Wallis at the Monticello Animal Clinic from on or about April 15, 1992

through on or about the Monday following August 6, 1992.

3. Sandra K. Dunham was employed by Dr. Robert E. Dunham at the Crossett Animal Hospital from the latter half of August, 1992 through November 10, 1993 as a veterinarian.

4. At all times from April 15, 1992 through April 30, 1996, when she was employed at either the Monticello Animal Clinic or the Crossett Animal Hospital, Sandra K. Dunham was under my direction and supervision when performing duties or actions at either the Monticello Animal Clinic or the Crossett Animal Hospital.

5. At all times from April 15, 1992 through April 30, 1996, I was available, either in person or by telephone, to provide direction, supervision, guidance, assistance or advice to Dr. Dunham. On a number of occasions during that time, she did contact me with questions, all of which I answered.

6. At no time after April 15, 1992 did anyone contact me on behalf of the Arkansas Veterinary Medical Examining Board to inquire about the status of Dr. Sandra K. Dunham's supervision.

I have read the above and foregoing statements, which are true and correct to the best of my knowledge and belief.

In witness whereof, I hereunto set my hand this 19 day of June, 1998.

FURTHER AFFIANT SAITH NOT.

"s/Dwight Witcher, D.V.M."

VERIFICATION

STATE OF ARKANSAS)
COUNTY OF PULASKI)

On this day appeared Dwight Witcher before me, a notary public, and stated on oath that the foregoing information is true and correct to the best of his knowledge and belief.

SUBSCRIBED AND SWORN to before me this 19 day of June, 1998.

"s/Shari L. Rogers", Notary Public
My Commission Expires: 1-29-2006

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DR. SANDRA K. DUNHAM, D.V.M. PLAINTIFF

VS. NO. LR-C-95-432

DR. GEORGE WADLEY, D.V.M., WINGFIELD MARTIN, DR. EVERETT I. ROGERS, D.V.M., DR. G. C. BLAIR, D.V.M., DR. JAMES W. WAYMACK, D.V.M., DR. DONALD I. MAYFIELD, D.V.M., DR. GARY F. STRICKLAND, D.V.M., AND SHERRY GLOVER DEFENDANTS

AFFIDAVIT OF ROBERT E. DUNHAM

I, Robert E. Dunham, first being duly sworn, do hereby state and verify the following on personal knowledge:

1. My name is Robert E. Dunham; I am a veterinarian, I hold a Certificate of License from the Arkansas Veterinary Medical Examining Board (the Board), and I have practiced at the Crossett Animal Hospital for over 25 years.

2. Dr. Sandra K. Dunham is my daughter; she is also a veterinarian, is a graduate of a foreign college

of veterinary medicine and she received a Certificate of License from the Board in 1997.

3. Dr. Sandra K. Dunham was employed by Dr. Gary Wallis at the Monticello Animal Clinic from on or about April 15, 1992 through on or about the Monday following August 6, 1992.

4. Dr. Sandra K. Dunham was employed at the Crossett Animal Hospital from the latter half of August, 1992 through the present.

5. At all times from the date Sandra K. Dunham was employed at the Crossett Animal Hospital until on or about November 10, 1993, I held a Certificate of License from the Board.

6. At all times from April 15, 1992, until on or about November 10, 1993, Sandra K. Dunham was under my direction and supervision when performing duties or actions which could be considered to be the practice of veterinary medicine; she did not provide diagnosis or establish any treatment regime without consulting me.

7. At all times from April 15, 1992 through November 10, 1993, I was available, either in person or by telephone, to provide direction, supervision, guidance, assistance or advice to Dr. Dunham. On a number of occasions during that time, she did contact me with questions, all of which I answered; I was also

physically present to assist her with specific procedures on a number of occasions, either at her request or as I thought appropriate or required.

8. At all times after November 10, 1993, until she received a temporary permit from the Board, Sandra K. Dunham was under the direction and supervision of one or more other veterinarians who held a Certificate of License from the Board whenever she performed any duties or actions at the Crossett Animal Hospital which could be considered to be the practice of veterinary medicine.

9. I first became aware that the Board questioned the status of Sandra K. Dunham's supervision at the Crossett Animal Hospital on or about August 21, 1993, when I received a complaint from the Board accusing me of violating the Arkansas Veterinary Medical Practices Act accusing me of aiding and abetting her unlawful practice.

10. I made the Board aware of the nature and extent of my own supervision of Sandra K. Dunham by means of an affidavit which I sent to the Board office on the Board's "OFFICIAL ANSWER FORM" in reply to the complaint, a true and correct copy of which is attached hereto; I later learned that the Board members were each sent copies on or about September 7, 1993.

11. Sandra Dunham's veterinary skills have always been satisfactory; her employment as a veterinarian with the Crossett Animal Hospital was

terminated solely because the Board obtained an agreement from me to do so on November 10, 1993, in order to settle the complaint against me.

12. At no time after April 15, 1992 did anyone contact me on behalf of the Arkansas Veterinary Medical Examining Board to inquire about the status of Dr. Sandra K. Dunham's supervision.

I have read the above and foregoing statements, which are true and correct to the best of my knowledge and belief.

In witness whereof, I hereunto set my hand this 19th day of June, 1998.

FURTHER AFFIANT SAITH NOT.

"s/Robert E. Dunham"

VERIFICATION

STATE OF ARKANSAS)
COUNTY OF PULASKI)

On this day appeared Robert E. Dunham before me, a notary public, and stated on oath that the foregoing information is true and correct to the best of his knowledge and belief.

SUBSCRIBED AND SWORN to before me this 19 day of June, 1998.

"s/Shari L. Rogers", Notary Public
My Commission Expires: 1-29-2006

ATTACHMENT TO AFFIDAVIT OF ROBERT E. DUNHAM

OFFICIAL ANSWER FORM

Act 650 of 1975 was enacted as an exercise of the police powers of the State of Arkansas to promote the public health, safety and welfare by safeguarding the people of the State against incompetent, dishonest or unprincipled practitioners of veterinary medicine. It was declared that the right to practice veterinary medicine was a privilege conferred by Legislative Grant to persons possessed of the personal and professional qualifications specified in the Arkansas Veterinary Medical Practice Act.

It is the policy of this Board to obtain a reply to each and every complaint filed. The Board will review both the complaint and your answer at the next scheduled meeting.

Name of Veterinarian or Individual: Dr. Robert E. Dunham. Address: 1005 W. First, Crossett, AR 71635. Name of Clinic (where applicable): Crossett Animal Hospital.

Name of Complainant: Amy Blevins. Address: 1743 (illegible) Road, Crossett, AR 71635.

State of: Arkansas County of: Ashley

AFFIDAVIT

(State as briefly as possible the accurate and truthful facts giving rise to the complaint)

I, Robert Dunham, being first duly sworn deposes and state that on May 14, 1993 Amy Blevins presented to me her semi-conscious 8-year old female Boxer "Holly" which had been struck by a motor vehicle. Examination of patient disclosed deep lacerations of medial right thigh with considerable blood loss, cyanotic mucous membranes, profound shock and possible spinal cord trauma. X-Rays revealed multiple fractures of right femur shaft and anterior dislocation of left coxofemoral joint. From the beginning this owner was given a very carefully guarded to poor prognosis and euthanasia of this patient was stated as a justified option. Owner declined euthanasia and requested whatever treatment be attempted to save this patient. "Holly" was stabilized with 300ml fresh whole blood, repeated i.v. boluses of 500mg Pred. Sod. Succinate, Oxygen administration. (Copy of medical records attached) Lacerations sutured and hemorrhage brought under control. On May 15 "Holly" was put under Halothan/Oxygen anaesthesia after induction with Bio-Tal. Right leg repaired with 3/16" intramedullary pin and three circlage wires (.22 ga.) Several small bone chips were removed. Post-op X-Rays taken. Immobilization appeared quite rigid and no further external fixation was considered necessary or feasible. The left hip dislocation was then reduced and held in place with a sling – metatarsus – posterior abdomen,

lateral thigh – hock joint – metatarsus; sling removed on May 17. On May 18 Owner requested patient be discharged from hospital although "Holly" could not bear weight or move either leg. Owner advised that possibility of nerve damage still could not be excluded. Owner advised to provide foam rubber bedding, to turn patient frequently, assist with waste elimination. On May 21 owner reported "Holly" was not "doing well". House call made, pain killers, dexamethasone administered, owner told to continue antibiotics. Blood sample taken: blood chemistry and QBC completely within normal limits.

VIOLATION OF REGULATION "B": Drs. R.M. and S.K. Dunham are performing the duties that any veterinary technician or nurse in a human hospital may perform. Anything above that is done under my close supervision. While Drs. Sandra and Michael Dunham are allowed to admit patients, obtain history, they are not to provide diagnosis or establish any treatment regime without consulting with me.

"s/R. Dunham"

(Handwritten: cc: Board Members, Wade, 9-9-93; 73)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DR. SANDRA K. DUNHAM, D.V.M. PLAINTIFF

VS. NO. LR-C-95-432

DR. GEORGE WADLEY, D.V.M., WINGFIELD MARTIN, DR. EVERETT I. ROGERS, D.V.M., DR. G. C. BLAIR, D.V.M., DR. JAMES W. WAYMACK, D.V.M., DR. DONALD I. MAYFIELD, D.V.M., DR. GARY F. STRICKLAND, D.V.M., AND SHERRY GLOVER DEFENDANTS

AFFIDAVIT OF GARY WALLIS

I, Gary Wallis, first being duly sworn, do hereby state and verify the following on personal knowledge:

1. Sandra K. Dunham is a veterinarian who is a graduate of a foreign college of veterinary medicine; she was employed at the Monticello Animal Clinic from on or about April 15, 1992 through on or about the first Monday following August 6, 1992.

2. At all times while Dr. Sandra K. Dunham was employed at the Monticello Animal Clinic, I held a Certificate of License from the Arkansas Veterinary Medical Examining Board (the Board).

3. At all times while she was employed at the Monticello Animal Clinic, I was available, either in person or by telephone, to provide direction, supervision, guidance, assistance or advice to Dr. Sandra K. Dunham. On a number of occasions during that time, she did contact me with questions, all of which I answered; I was also physically present to assist her with specific procedures on occasion.

4. At no time after April 15, 1992 did anyone contact me on behalf of the Arkansas Veterinary Medical Examining Board to inquire about the status of Dr. Sandra K. Dunham's supervision; no members or employees of the Board ever asked me or requested any information from me concerning whether or not Sandra Dunham was under my direction and supervision while she was employed at the Monticello Animal Clinic.

5. Sandra Dunham's veterinary skills were always satisfactory; her employment with the Monticello Animal Clinic was terminated solely because of "Cease and Desist" letters she and I received from the Attorney General's Office dated August 6, 1992; a true and correct copy of the letter I received is attached hereto.

I have read the above and foregoing statements, which are true and correct to the best of my knowledge and belief.

In witness whereof, I hereunto set my hand this 22 day of June, 1998.

FURTHER AFFIANT SAITH NOT.

"s/Gary Wallis"

VERIFICATION

STATE OF ARKANSAS)
COUNTY OF PULASKI)

On this day appeared Gary Wallis before me, a notary public, and stated on oath that the foregoing information is true and correct to the best of his knowledge and belief.

SUBSCRIBED AND SWORN to before me this 22 day of June, 1998.

"s/Clifton H. Hoofman", Notary Public
My Commission Expires: Nov. 1, 2006

ATTACHMENT TO AFFIDAVIT OF GARY WALLIS

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL

Winston Bryant
Attorney General

Telephone
(501) 682-2007

August 6, 1992

Gary G. Wallis, D.V.M.
Park Hill Pet Clinic
2900 Main
North Little Rock, AR 72116

Dear Dr. Wallis:

I am writing to you in my capacity as attorney for the Arkansas Veterinary Medical Examining Board. The Board has information and belief that you have employed an individual who is practicing veterinary medicine unlawfully.

It has come to the Board's attention that Dr. Sandra Dunham is employed by you at your clinic located at 109 Highway 425 South in Monticello, Arkansas. Please be advised that Dr. Dunham took the National Board Exam and CCT in April of 1992 and passed the CCT but did not pass the NBE. Dr. Dunham, therefore, is not licensed to practice veterinary medicine in the State of Arkansas.

Please be advised that Ark. Code Ann. §17-99-307(a)(6) provides that having professional association with or employing, any person practicing veterinary medicine unlawfully is grounds for disciplinary action including a civil penalty of up to $5000 and or suspension or revocation of licensure.

It is necessary, therefore, for you to cease and desist from employing any person to practice

veterinary medicine in this state who is not duly authorized by the Board to engage in such practice.

If you have any questions, you may call the Board office at 224-2836.

Sincerely,

"s/M. Wade Hodge"
Assistant Attorney General

MWH:dc
cc: Sherry Glover
Dr. Sandra Dunham

200 Tower Building, 323 Center Street•Little Rock, Arkansas 72201-2610

AFFIDAVIT OF SHERRY GLOVER

My name is Sherry Glover. I am the Executive Secretary of the Arkansas Veterinary Medical Examining Board, (hereafter "Board") I have been so employed since November 14, 1983. I have been present at all Board meetings during that time.

At Board meetings, the Board may hold formal hearings, informal hearings, or conduct a regular business meeting with no scheduled hearings. A formal hearing is one in which the Board has sent notice of official charges to a person practicing

veterinary medicine regarding allegations of unlawful practice. An informal hearing is one at which a person is requested to appear to meet informally with the Board to see if an agreement can be reached without the necessity of a formal hearing.

During regular business meetings, it is common for Board members to discuss complaints received or allegations of, persons engaging in the unlawful practice of veterinary medicine. By the "unlawful practice of veterinary medicine," I mean a violation of the Arkansas Veterinary Medical Practice Act, A.C.A. §17-101-101 et seq. (Repl. 1995), or the regulations promulgated by the Board. Such unlawful practice may be either by a licensed veterinarian or by a person not licensed by the Board. The Board may discuss the appropriate course of action for dealing with such an individual. Counsel from the Office of the Attorney General is normally present during Board meetings. At no time during my employment with the Board has the Board ever been advised by counsel that it is improper to discuss allegations of unlawful practice without first contacting the person in question.

During the time relevant to Plaintiff's complaint, the Board did not have authority to fine or otherwise take personal disciplinary action against unlicensed practitioners. A veterinarian holding a license issued by the Board could be fined or have his or her license suspended or revoked by the Board for unlawful practice. During the time relevant to Plaintiff's complaint, a person allegedly engaging in the unlawful practice of veterinary medicine without

a license issued by the Board could be sued in chancery court for an injunction. Also, as could any other citizen, I or any Board member could request action from local prosecuting attorneys for alleged misdemeanor violations. The Board has, on occasion, requested its counsel to write letters to prosecuting attorneys or directly to individuals that the Board felt were engaging in the unlawful practice of veterinary medicine. Such was the case with the plaintiff.

The plaintiff received a license from the Board in 1997. To become licensed, a veterinarian, in addition to other statutory requirements, must pass a Clinical Competency Test (CCT) and the National Board Exam (NBE). Plaintiff is a graduate of a foreign school of veterinary medicine. The CCT and NBE, however, are tests that all veterinarians, not just foreign graduates, must take in order to receive a license. Plaintiff passed the CCT in 1992. Plaintiff also took the NBE at that time but did not pass. Plaintiff passed the NBE some years later on her third attempt. Plaintiff could not become licensed until passing the NBE.

The Board, acting upon information and belief that Plaintiff was practicing outside the law, sent a letter to Plaintiff while she was employed at the Monticello Animal Clinic. Plaintiff was not licensed at that time. The owner of the clinic, Dr. Gary Wallis, lived in North Little Rock. If Plaintiff considered herself to be entitled to the exemption for persons in the process of obtaining an Educational Certificate for Foreign Veterinary Graduates (ECFVG), she would

have to have been practicing under the direction and supervision of a licensed veterinarian, as the statute required. The Board, at that time, believed that the plaintiff was not under the direction and supervision of a licensed veterinarian since the owner of the Monticello Clinic lived in North Little Rock, and to the best of the collective knowledge of the Board, no licensed veterinarian was practicing at the Monticello Clinic. Plaintiff was directed to cease practicing and requested to call the Board office if she had any questions. While the letter was written by the Board's counsel on Attorney General letterhead, the Board's telephone number was provided in the letter. I am the only person in the Board office and therefore answer all phone calls, and turn on an answering machine when I am out of the office. Plaintiff never called the Board office at any time after receiving the letter.

In November of 1993, the board issued a notice of a formal hearing to Dr. Robert Dunham, who is the plaintiff's father and at that time a licensed veterinarian, charging him with certain violations of the Practice Act. Dr. Robert Dunham appeared before the Board for a formal hearing, accompanied by his attorney and the plaintiff. Dr. Robert Dunham entered into a Consent Order with the Board whereby he agreed to surrender his license for a period of not less than one year. During the meeting that day, Plaintiff was in the conference room where the meeting held. Plaintiff was informed by one of the Board members that she could not practice at her father's clinic, The Crossett Animal Clinic, while her father's license was revoked, unless another licensed veterinarian were

brought in to run the clinic. At no time did Plaintiff request to address the Board, nor at any time was she denied the opportunity to address the Board.

The Board is subject to the Arkansas Freedom of Information Act, A.C.A. §25-19-101 et seq (FOIA), and therefore all of its meetings are open to the public. The decision of the Board regarding Plaintiff's father was made in open session and Plaintiff was in the room during the discussions and announcement of the decision of the Board to enter into the Consent Order regarding the surrender of her father's license. The Board is also subject to the Arkansas Administrative Procedures Act, A.C.A. §25-15-201 et seq. To the best of my knowledge and belief, the plaintiff did not file a petition for review of the Board's decision regarding her father.

Being subject to the FOIA, the Board's records are open to all Arkansas citizens and the media. If a person from the media requested any Board information regarding the plaintiff, it would have been my responsibility to provide it to them. From time to time, the Board also issues press releases. I do not recall whether the Board issued any press releases about any of its dealings with the plaintiff. If there were any such press releases, I would have formulated these at the request of the Board, and according to Board counsel, any information in the possession of the board, with limited exceptions, is subject to the FOIA.

Plaintiff received another letter from the Board while she was working at the Crossett Animal Clinic and the board subsequently filed a petition for an injunction against the plaintiff to enjoin her from practicing without a license. The Board acted upon information it received that Plaintiff was practicing veterinary medicine at the Crossett Clinic after her father surrendered his license. The Board acted upon a report from an investigator who reported to the Board that he observed Dr. Dunham administer medication to a dog and take a blood sample from the dog. The investigator reported that at the time this occurred, the plaintiff, the investigator, and the owner of the dog were the only persons in the clinic. Based upon this reliable information that the plaintiff was practicing veterinary medicine while not under the direction and supervision of a licensed veterinarian, the Board petitioned the Ashley County Chancery Court for an injunction to enjoin Plaintiff from the unauthorized practice of veterinary medicine.

Plaintiff is not the only graduate of a foreign school to receive a letter from the Board directing the recipient to cease practicing veterinary medicine while not under the supervision of a licensed veterinarian. There has been at least one other individual to receive such a letter. To the best of my knowledge and belief, that individual complied with the Board's letter.

I have acted in good faith toward Plaintiff at all times. None of Plaintiff's prior acts were held against her when she became eligible for a license in 1997.

Plaintiff received her license in a timely fashion upon meeting the requirements.

"s/Sherry Glover"

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss
COUNTY OF PULASKI)

Subscribed and sworn to before me, a Notary Public, on this 5th day of June, 1998.

"s/Karen H. Gray", Notary Public
My Commission Expires: Aug. 1, 2006

AFFIDAVIT OF JAMES W. WAYMACK, D.V.M.

My name is James W. Waymack. I am a licensed veterinarian and member of the Arkansas Veterinary Medical Examining Board (Board). I have been a Board member since 1987. I participated in the Board discussions in which the Board requested its counsel to send cease and desist letters to the plaintiff and petition the chancery court for an injunction. It was the general consensus of the Board that the former exemption in the Practice Act for ECFVG candidates practicing under the direction and supervision of a licensed veterinarian implicitly

required the supervising licensed veterinarian to be present at the clinic where the ECFVG candidate was practicing. Upon receiving information that the plaintiff was practicing at the clinics with no licensed veterinarian on site, the Board decided to take the limited action it had the authority to take.

Any votes or other Board discussions that I participated in regarding the plaintiff were always taken in good faith and with the belief that not only did the Board have the authority to take what action it did, but that the Board also had the responsibility to take such action.

"s/James W. Waymack, D.V.M."

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF HOT SPRING)

Subscribed and sworn to before me, a Notary Public, on this 5th day of June, 1998.

"s/Sharon K. Phelps", Notary Public
My Commission Expires: 6-1-2002

AFFIDAVIT OF G. C. BLAIR, D.V.M.

My name is G. C. Blair. I am a licensed veterinarian and member of the Arkansas Veterinary Medical Examining Board (Board). I have been a Board member since 1985. I participated in the Board discussions in which the Board requested its counsel to send cease and desist letters to the plaintiff and petition the chancery court for an injunction. It was the general consensus of the Board that the former exemption in the Practice Act for ECFVG candidates practicing under the direction and supervision of a licensed veterinarian implicitly required the supervising licensed veterinarian to be present at the clinic where the ECFVG candidate was practicing. Upon receiving information that the plaintiff was practicing at the clinics with no licensed veterinarian on site, the Board decided to take the limited action it had the authority to take.

Any votes or other Board discussions that I participated in regarding the plaintiff were always taken in good faith and with the belief that not only did the Board have the authority to take what action it did, but that the Board also had the responsibility to take such action.

"s/G. C. Blair, D.V.M."

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF SEARCY)

Subscribed and sworn to before me, a Notary Public, on this 5th day of June, 1998.

"s/LaVonne Tull", Notary Public
My Commission Expires: 01-12-01

AFFIDAVIT OF WINGFIELD MARTIN

My name is Wingfield Martin. I am a member of the Arkansas Veterinary Medical Examining Board (Board). I have been a Board member since 1986. I am the public member of the Board and I am not a veterinarian. I participated in the Board discussions in which the Board requested its counsel to send cease and desist letters to the plaintiff and petition the chancery court for an injunction. It was the general consensus of the Board that the former exemption in the Practice Act for ECFVG candidates practicing under the direction and supervision of a licensed veterinarian implicitly required the supervising licensed veterinarian to be present at the clinic where the ECFVG candidate was practicing. Upon receiving information that the plaintiff was practicing at the clinics with no licensed veterinarian on site, the Board

decided to take the limited action it had the authority to take.

Any other Board discussions that I participated in regarding the plaintiff were always taken in good faith and with the belief that not only did the Board have the authority to take what action it did, but that the Board also had the responsibility to take such action.

"s/Wingfield Martin"

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF PULASKI)

Subscribed and sworn to before me, a Notary Public, on this 5 day of June, 1998.

"s/John S. Witherspoon", Notary Public
My Commission Expires: Oct. 27, 2004

AFFIDAVIT OF EVERETT I. ROGERS, D.V.M.

My name is Everett I. Rogers. I am a licensed veterinarian and former member of the Arkansas Veterinary Medical Examining Board (Board). I was a Board member from 1983 to 1993. I participated in the Board discussions in which the Board requested

its counsel to send a cease and desist letter to the plaintiff at the Monticello Animal Clinic. I was not a member of the Board during any subsequent decisions regarding the plaintiff. It was the general consensus of the Board that the former exemption in the Practice Act for ECFVG candidates practicing under the direction and supervision of a licensed veterinarian implicitly required the supervising licensed veterinarian to be present at the clinic where the ECFVG candidate was practicing. Upon receiving information that the plaintiff was practicing at the Monticello Animal Clinic with no licensed veterinarian on site, the Board decided to take the limited action it had the authority to take.

Any other Board discussions that I participated in regarding the plaintiff were always taken in good faith and with the belief that not only did the Board have the authority to take what action it did, but that the Board also had the responsibility to take such action.

"s/Everett I. Rogers, D.V.M."

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF CRAIGHEAD)

Subscribed and sworn to before me, a Notary Public, on this 5th day of June, 1998.

"s/Becky Durham", Notary Public
My Commission Expires: 3-23-99

AFFIDAVIT OF DONALD I. MAYFIELD, D.V.M.

My name is Donald I. Mayfield. I am a licensed veterinarian and former member of the Arkansas Veterinary Medical Examining Board (Board). I was a Board member from 1983 until March of 1998. I participated in the Board discussions in which the Board requested its counsel to send a cease and desist letter to the plaintiff at the Crossett Animal Clinic and petition the chancery court for an injunction. It was the general consensus of the Board that the former exemption in the Practice Act for ECFVG candidates practicing under the direction and supervision of a licensed veterinarian implicitly required the supervising licensed veterinarian to be present at the clinic where the ECFVG candidate was practicing. Upon receiving information that the plaintiff was practicing at the Crossett Animal Clinic with no licensed veterinarian on site, the Board decided to take the limited action it had the authority to take. I was not a Board member in 1992 when the letter was sent to Plaintiff at the Monticello Clinic, and consequently did not vote or participate in that decision.

Any votes or other Board discussions that I participated in regarding the plaintiff were always

taken in good faith and with the belief that not only did the Board have the authority to take what action it did, but that the Board also had the responsibility to take such action.

"s/Donald I. Mayfield, D.V.M."

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF WASHINGTON)

Subscribed and sworn to before me, a Notary Public, on this 8th day of June, 1998.

"s/Lydia Kaye Harrison", Notary Public
My Commission Expires: 3/26/2004

AFFIDAVIT OF GARY F. STRICKLAND, D.V.M.

My name is Gary Strickland. I am a licensed veterinarian and a member of the Arkansas Veterinary Medical Examining Board (Board). I have been a member of the Board since 1994. To the best of my knowledge and recollection, I have never voted to take any action whatsoever regarding the plaintiff. I was not a board member at any time relevant to her complaint, amended complaint, or second amended complaint. Any matters of discussion in which I have

participated as a Board member regarding the plaintiff were in good faith. My only recollection of any discussion at Board meetings I have attended regarding the plaintiff were merely updates from Board counsel on the status of the lawsuit filed by the plaintiff.

"s/Gary F. Strickland, D.V.M."

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF CRAIGHEAD)

Subscribed and sworn to before me, a Notary Public, on this 5th day of June, 1998.

"s/Becky Durham", Notary Public
My Commission Expires: 3-23-99

AFFIDAVIT OF GEORGE R. WADLEY, D.V.M.

My name is George R. Wadley. I am a licensed veterinarian and former member of the Arkansas Veterinary Medical Examining Board (Board). I was a Board member from 1979 until 1994. I participated in the Board discussions in which the Board requested its counsel to send cease and desist letters to the plaintiff and petition the chancery court for an

injunction. It was the general consensus of the Board that the former exemption in the Practice Act for ECFVG candidates practicing under the direction and supervision of a licensed veterinarian implicitly required the supervising licensed veterinarian to be present at the clinic where the ECFVG candidate was practicing. Upon receiving information that the plaintiff was practicing at the clinics with no licensed veterinarian on site, the Board decided to take the limited action it had the authority to take.

Any votes or other Board discussions that I participated in regarding the plaintiff were always taken in good faith and with the belief that not only did the Board have the authority to take what action it did, but that the Board also had the responsibility to take such action.

"s/George R. Wadley, D.V.M."

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF WHITE)

Subscribed and sworn to before me, a Notary Public, on this 22nd day of June, 1998.

"s/Vickie Thompson", Notary Public
My Commission Expires: 8-15-99

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DR. SANDRA K. DUNHAM,
PLAINTIFF

VS. NO. LR-C-95-432

DR. GEORGE WADLEY, D.V.M., WINGFIELD MARTIN, DR. EVERETT I. ROGERS, D.V.M., DR. G. C. BLAIR, D.V.M., DR. JAMES W. WAYMACK, D.V.M., DR. DONALD I. MAYFIELD, D.V.M., DR. GARY F. STRICKLAND, D.V.M. AND SHERRY GLOVER,
DEFENDANTS

DEFENDANT'S STATEMENT OF UNCONTESTED MATERIAL FACTS

(Filed June 8, 1998)

Comes now Defendants, by and through their counsel, Attorney General Winston Bryant and Assistant Attorney General M. Wade Hodge, and for their Statement of Uncontested Material Facts, state:

1. The plaintiff is a graduate of a foreign college of veterinary medicine, having graduated in 1991.

2. The defendants are current or former members of the Arkansas Veterinarian Medical Examining Board and their Executive Secretary.

3. In 1992, Plaintiff was not licensed by the Board.

4. In 1992, Plaintiff began work at the Monticello Animal Clinic, located in Monticello, Arkansas. The owner of the clinic, Dr. Gary Wallace, lived in North Little Rock.

5. The plaintiff practiced veterinary medicine at the Monticello Animal Clinic while no other licensed veterinarian was present at the clinic. At that time, the Arkansas Veterinarian Medical Practice Act, A.C.A. §17-101-101 et seq., provided that foreign veterinarian graduates in the process of obtaining an Educational Certificate for Foreign Veterinarian Graduates could practice veterinary medicine while under the direction and supervision of a licensed veterinarian.

6. At a regular Board meeting, the defendants decided that the plaintiff was not practicing veterinary medicine under the direction and supervision of a licensed veterinarian, and determined to send a cease and desist letter, and in fact did send such letter, to the plaintiff, advising her that it was their opinion that she was practicing in an unauthorized manner.

7. The Defendants also authorized to send, and in fact did send, a letter to Dr. Gary Wallace, the

plaintiff's employer, informing him of Plaintiff's status.

8. The plaintiff is not the only graduate of a foreign college of veterinary medicine to ever have received such a letter.

9. The letter to the plaintiff, informed her that if she had any questions, she could call the Board office, and provided the Board office's phone number. Plaintiff never called the Board office in regard to these matters.

10. Plaintiff subsequently went to work at the Crossett Animal Clinic under the employment of her father, Dr. Robert Dunham.

11. In November of 1993, the Board held a hearing to consider charges against Dr. Robert E. Dunham, and an agreement was entered into between Robert E. Dunham and the Board by which Dr. Robert E. Dunham would surrender his veterinary license.

12. Plaintiff was present during the hearing of Dr. Robert E. Dunham. Plaintiff was informed by one of the Board members that she could not practice at her father's clinic, the Crossett Animal Clinic, while his license was revoked unless another licensed veterinarian was brought in to run the clinic.

13. At no time did Plaintiff request to address the Board, nor at any time was she denied the opportunity to address the Board.

14. Plaintiff received another letter from the Board while she was working at the Crossett Animal Clinic requesting that she cease and desist practicing veterinary medicine while not under the direction of a licensed veterinarian. As did the previous letter, the letter sent to the plaintiff in Crossett indicated the Board's telephone number and invited the plaintiff to contact the Board office if she had any questions. Plaintiff never called the Board office regarding this matter.

15. Having had no response from the plaintiff, and upon information and belief that she was still engaging in the unlawful practice of veterinary medicine, Defendants filed a Petition for Injunctive Relief against the plaintiff in Ashley County Chancery Court.

16. Plaintiff filed a counterclaim for declaratory relief against the Board in Ashley County Chancery Court.

17. Plaintiff and the Board entered into a joint stipulation of facts in the lawsuit filed in the Chancery Court of Ashley County. In paragraph 5 of the Joint Stipulation of Facts, Plaintiff stipulated that she was "subject to license by the Board as defined by A.C.A. §25-15-202(8), and is governed by the provisions of the Arkansas Veterinarian Medical Practices Act and the rules and regulation promulgated by the Board." (See Exhibit 9, paragraph 5).

18. Plaintiff further stipulated that she was "neither a licensed veterinarian as defined by A.C.A. §17-99-102(4), nor the holder of a valid temporary permit issued by the Board, as set forth in A.C.A. §17-99-304(a).

19. At the time relevant to Plaintiff's Second Amended Complaint, the Board did not have the statutory authority to require a person not licensed by the Board to appear before the board for any type of disciplinary proceeding. At all times relevant to the actions taken by the Board against the plaintiff, it was the general consensus of the Board that in order for a person to be acting under the direction and supervision of a licensed veterinarian, the supervising licensed veterinarian must be present at the clinic.

20. Plaintiff received a license from the Board in 1997. In order to receive a license from the Board, all veterinarians, in addition to other statutory requirements, must pass a clinical competency test and the National Board Exam. This applies to all candidates for a license, not just foreign graduates.

21. The Board is subject to the Arkansas Freedom of Information Act, A.C.A. §25-19-101 et seq, and therefore of its meetings are opened to the public and with limited exceptions, all of the Board records are opened to all Arkansas Citizens as well as the media.

22. The Arkansas Administrative Procedure Act, A.C.A. §25-15-201 et seq., provides that any

person who considers himself to be injured in their person or property by a Board order may petition for judicial view of that decision in any county in which they reside or do business. Plaintiff never appealed the decision of the Board under which her father surrendered his license and in turn caused Plaintiff to be informed by the Board that she could not practice at the Crossett Animal Clinic unless she was doing so under the direction and supervision of another licensed veterinarian.

23. None of Plaintiff's prior acts were held against her when she became eligible for license in 1997.

24. Plaintiff received her license in a timely fashion upon meeting all the applicable requirements.

25. Defendants are named in their official capacities solely for the purpose of injunctive relief.

26. At no time has Plaintiff ever alleged that she, prior to 1997, held a license issued by the Board.

WHEREFORE, the defendants submit their statement of uncontested material facts.

"s/M. Wade Hodge", Bar No. 90072
Assistant Attorney General
200 Catlett-Prien Tower
323 Center Street

Little Rock, AR 72201-2610
(501) 682-2007
Attorneys for Defendants

Certificate of Service dated June 8, 1998 to Robert J. Price by U. S. Mail. "s/M. Wade Hodge"

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DR. SANDRA K. DUNHAM, D.V.M.
PLAINTIFF

VS. NO. LR-C-95-432

DR. GEORGE WADLEY, D.V.M., WINGFIELD MARTIN, DR. EVERETT I. ROGERS, D.V.M., DR. G. C. BLAIR, D.V.M., DR. JAMES W. WAYMACK, D.V.M., DR. DONALD I. MAYFIELD, D.V.M., DR. GARY F. STRICKLAND, D.V.M., AND SHERRY GLOVER
DEFENDANTS

PLAINTIFF'S STATEMENT OF CONTESTED MATERIAL FACTS

(Filed June 22, 1998)

Comes now the Plaintiff, Sandra K. Dunham, D.V.M., by and through her attorneys, **PRICE LAW FIRM**, and states the following facts, as to which she contends that a genuine issue exists to be tried:

1. The Plaintiff is a veterinarian who now holds a Certificate of License from the Arkansas Veterinary Medical Examining Board (the Board).

2. At all times from March 3, 1992 through April 30, 1996 the Plaintiff was enrolled in the American Veterinary Medical Association's ECFVG program.

3. The Defendants were aware of the Plaintiff's enrollment in the ECFVG program at all of the times they acted.

4. On April 15, 1992, the Plaintiff became employed by Gary Wallis, D.V.M. at the Monticello Animal Clinic.

5. At all times when the Plaintiff was employed at the Monticello Animal Clinic, she was under the direction and supervision of a licensed veterinarian.

6. The licensed veterinarians under whose supervision she was performing duties or actions at

the Monticello Animal Clinic were Gary Wallis, D.V.M., Robert E. Dunham, D.V.M., John Porrier, D.V.M., Judy Porrier, D.V.M., and Dwight Witcher, D.V.M.

7. The licensed veterinarians under whose supervision she was performing duties or actions at the Crossett Animal Hospital were Robert E. Dunham, D.V.M. (through November 10, 1993), John Porrier, D.V.M., Judy Porrier, D.V.M., and Dwight Witcher, D.V.M.

8. The Defendants were aware on August 6, 1992 that the Plaintiff was employed by Gary Wallis at the Monticello Animal Clinic.

9. The Defendants were aware on August 6, 1992 that the Plaintiff worked for a licensed veterinarian at the Monticello Animal Clinic.

10. During the latter half of August, 1992, the Plaintiff became employed by Robert E. Dunham at the Crossett Animal Hospital.

11. Defendants were aware that Robert E. Dunham and Sandra K. Dunham were father and daughter.

12. The Defendants were aware on November 9 and 10, 1992 that the Plaintiff was employed at the Crossett Animal Hospital.

13. The Defendants were aware on November 9 and 10, 1992 that the Plaintiff worked for a licensed veterinarian at the Crossett Animal Hospital.

14. The Defendants did not contact Gary Wallis to determine whether the Plaintiff was under the direction and supervision of a licensed veterinarian while she was employed at the Monticello Animal Clinic.

15. The Defendants did not contact Dr. Robert E. Dunham to determine whether the Plaintiff was under the direction and supervision of a licensed veterinarian while she was employed at the Crossett Animal Hospital.

16. On or about August 6, 1992, the Defendants caused a letter to be sent to the Plaintiff; the letter contained the language, "It is necessary, therefore, for you to cease and desist from the practice of veterinary medicine until such time as you have fulfilled the necessary requirements and are licensed by the Board."

17. The Defendants did not give the Plaintiff any prior notice that she was accused of practicing without a license at the Monticello Animal Clinic or that they were considering the August 6, 1992 action against her.

18. On or about August 6, 1992, the Defendants also caused a letter to be sent to the Plaintiff's employer, Gary Wallis; the letter contained

the language, "Dr. Dunham, therefore, is not licensed to practice veterinary medicine in the State of Arkansas," and "It is necessary, therefore, for you to cease and desist from employing any person to practice veterinary medicine in this state who is not duly authorized by the Board to engage in such practice."

19. On or about the first Monday following August 6, 1992, the Plaintiff's employment with the Monticello Animal Clinic was terminated

20. The letters sent to the Plaintiff were the sole and proximate cause of the termination of the Plaintiff's employment with the Monticello Animal Clinic.

21. On or about November 9, 1993, the Defendants caused a second letter to be sent to the Plaintiff; the letter contained the la..guage, "It is therefore necessary for you to cease and desist from the practice of veterinary medicine unless or until you become licensed by the Board."

22. The Defendants did not give the Plaintiff any prior notice that she was accused of practicing without a license at the Crossett Animal Hospital or that they were considering the N vember 9 or 10, 1992 action against her.

23. On November 10, 1993, the Defendants conducted a hearing in which they were to decide whether disciplinary action would be taken against the

certificate of license held by Dr. Robert E. Dunham, the Plaintiff's father.

24. The Plaintiff was compelled by subpoena from the Board to attend the November 10, 1993 hearing.

25. Before the conclusion of the November 10, 1993 hearing, the Board entered into an agreement with Robert E. Dunham to resolve the disciplinary action against his certificate of license.

26. As a part of the agreement reached between Robert E. Dunham and the Board, Robert E. Dunham was required to agree that Sandra Dunham would not work in the Crossett Animal Hospital as a veterinarian.

27. The Defendants did not give the Plaintiff any prior notice that she was accused of practicing without a license at the Crossett Animal Hospital or that they were considering the November 10, 1992 action against her.

28. The Plaintiff contacted two of the Defendants concerning the actions the Defendants had taken against her.

29. The Plaintiff first contacted Dr. George Wadley, and left four messages for him at his home

30. Dr. Wadley was aware that the Plaintiff had called, but did not return her calls.

31. The Plaintiff next called Dr. James Waymack at his clinic in Arkadelphia, Arkansas.

32. Dr. Waymack refused to discuss the matter with her, saying only that she had "better get a lawyer."

The Plaintiff also contests the following matters contained within the DEFENDANTS' STATEMENT OF UNCONTESTED MATERIAL FACTS:

33. In No. 5: In the first sentence, the term "practiced veterinary medicine," is not defined so as to allow the Plaintiff to understand what the Defendants mean by it; the second sentence is a conclusion of law and not a statement of fact.

34. In Nos. 6, 7, 9, 14, 17 and 18: The documents those paragraphs reference are all attached as exhibits to pleadings which are before the Court on Summary Judgment; all speak for themselves. The matters contained in those paragraphs other than the existence and content of the referenced documents are contested.

35. The second sentence of paragraph 12 is contested.

36. The first sentence of paragraph 15 is contested.

37. The first sentence of paragraph 19 is a conclusion of law and not a statement of fact. The

second sentence also contains a conclusion of law, and the factual averment that the Board reached a consensus is not material to any issue before the Court.

38. The second sentence of paragraph 20 is a conclusion of law.

39. Paragraph 21 is a conclusion of law.

40. The first sentence of paragraph 22 is a conclusion of law. The second sentence is contested.

41. Paragraph 23 is contested.

"s/Robert J. Price", AR Bar #82128
PRICE LAW FIRM
212 Center Street, Ste. 600
Little Rock, AR 72201
(501) 375-8222

Certificate of Service dated June 22, 1998 to M. Wade Hodge by U. S. Mail. "s/Robert J. Price"